

SCOTTISH COUNCIL OF INDEPENDENT SCHOOLS (SCIS)

GUIDELINES ON CHILD PROTECTION

The SCIS Child Protection guidelines aim to support teachers and others working in independent schools in Scotland in their task of safeguarding and promoting the welfare of the children in their care. They set out:

- * the rights of children to protection and care.
- * a description of the Scottish child protection system and the roles of police and social work.
- * the responsibilities of those working in independent schools.
- * what independent schools can do to fulfil their child protection responsibilities
- * guidance on the recognition of child abuse.
- * what action to take if child abuse is suspected.

**Scottish Council of Independent Schools
June 2006**

The SCIS guidelines may be reproduced either in whole, or in part, by schools, education authorities and other educational organisations for training and staff development purposes.

SCIS Child Protection Guidelines

The first and second editions of the SCIS child protection guidelines were prepared in 1995 and in 1997 by Professor Kathleen Marshall, who was appointed Scotland's First Commissioner for Children and Young People in 2004. The guidelines are widely recognized and are used by schools, authorities and other agencies both in Scotland and further afield. The 2006 edition includes up-dates, amendments and additions prepared by Dr Susan Hamilton, Child Protection Consultant, that take account of current legislation, of revised national guidelines and of developments in the area of child protection. The guidelines are highly recommended to all those who have responsibility for the welfare and wellbeing of children in independent and other schools.

Judith Sischy, Director, SCIS

It is good to see the guidelines being revised and updated. The amount of work that has been put into this, and the consequent expansion in size, shows just how much has happened in child protection since production of the second edition. There is a lot here that is new and that will inevitably be refined as time goes by. I congratulate SCIS and the authors on this work.

Professor Kathleen Marshall, Commissioner for Children and Young People in Scotland

The staff of a school have an important part to play in the sensitive and delicate work of dealing with known or suspected cases of abuse. In addition they have a role of very particular importance in the identification of the signs of abuse. There are opportunities within the context of school life for observing symptoms which could otherwise well pass unnoticed. For advantage to be taken of these opportunities there is a need for some knowledge of those symptoms and an awareness of the action which requires to be taken when they are identified.

The ascertainment of the truth remains, and will always remain, a task requiring considerable patience, skill and sensibility.

The SCIS guidelines are a valuable contribution towards the achievement of this task. All those who have prepared and worked on the text deserve to be congratulated on their initiative and I warmly commend this new edition.

The Rt Hon The Lord Clyde

Contents

1.	INTRODUCTION	8
2.	SCOTTISH LAW, RIGHTS AND RESPONSIBILITIES	10
2.1	Children’s Rights to Protection and Care	10
2.2	The European Convention on Human Rights (ECHR)	11
2.2.1	Articles 2, 3, 8 and 14	11
2.2.2	Independent Schools and Human Rights	12
2.2.3	Minority Ethnic Groups	12
2.3	Protecting Children and Young People in Scotland	12
2.3.1	The Children’s Charter	12
2.3.2	The Pledge to Children	13
2.3.3	Framework for Standards	14
2.3.4	Scotland’s Commissioner for Children and Young People	14
2.4	The Responsibility of Adults	15
2.4.1	Criminal Liability	15
2.4.2	The Law and Parental Chastisement	16
2.4.3	Corporal Punishment	16
2.4.4	Protection of Children’s Welfare	17
2.4.5	16 – 18 Year Olds	17
2.5	Boarding/Residential Schools	18
2.6	‘In Loco Parentis’ and Delegation	20
2.7	What is Child Abuse	21
2.8	The Legal Implications of Child Abuse	25
2.8.1	Criminal and Child Protection Processes	25
2.8.2	The Children’s Hearing System	26
2.9	Is there a Legal Duty to Report Suspicions of Child Abuse?	28
2.10	Actions for Defamation	29
2.11	Breach of Confidence	29

2.12	Consent to Medical Examination and Treatment	30
2.13	Special Considerations Relating to Nursery Schools	31
2.14	Children with Disabilities and Additional Support Needs	32
2.15	The Child Protection Register	33
3.	GENERAL GUIDANCE FOR SCHOOLS	35
3.1	Preparation of Child Protection Procedures	35
3.2	Appointment of Staff and Governors	35
3.2.1	Disclosure Checks	35
3.2.2	Frequency of Disclosure Checks	36
3.2.3	Protection of Children (Scotland) Act 2003	36
3.2.4	Scottish Vetting and Barring Scheme	37
3.2.5	Recruitment Procedures	37
3.3	Guidance on Interaction with Pupils	39
3.4	Responding when a Child Tells of Abuse	39
3.5	Confidentiality	39
3.6	Staff Training	41
3.7	Personal Circumstances	42
3.8	Appointment of Child Protection Co-ordinator (CPC)	42
3.9	The Contribution of the Curriculum to Personal Health and Safety and Anti-Bullying	43
3.10	Teenage Pregnancy and Contraception	44
3.11	Sexual Exploitation and Prostitution	46
3.12	The Role of Childline	46
3.13	Scottish Candidate Number (Unique Pupil Identifier)	47
3.14	Action Plan for School Management	47
4.	GUIDANCE IN SPECIFIC SITUATIONS	49
4.1	Initial Response to Concerns	49
4.1.1	How Concerns may Arise	49

4.1.2	A Member of Staff Suspects Abuse or a Child Tells of Abuse	49
4.1.3	A Third Party Expresses Concern	51
4.1.4	An Anonymous Allegation is Received	51
4.1.5	Report by a Member of the Public	51
4.2	Check List for Staff in all Cases	52
4.2.1	In All Cases	52
4.2.2	Historic Abuse/Keeping of Records	53
4.3	Action by Staff in Exceptional cases	53
4.4	Action by the Child Protection Co-ordinator (CPC)	53
4.5	Child Abuse within a Family or by a Family Member	55
4.6	Emergency Situations	55
4.6.1	Contacting other Agencies	55
4.6.2	Sex Offenders in the Community or People Posing a Risk to Schools	56
4.7	Allegations Against Staff	56
4.7.1	Establishing the Facts – Unfounded Allegations	56
4.7.2	Establishing The Facts – Where the Information Suggests Possible Child Abuse	57
4.7.3	Abuse of Trust	59
4.7.4	Allegations against the Head or Child Protection Co-ordinator	59
4.7.5	Inappropriate Behaviour by Staff	59
4.7.6	The Role of Outside Agencies	59
4.8	Action by Children and Young People Themselves	60
4.8.1	Inappropriate Behaviour by pupils	60
4.8.2	Sexual Incidents	60
4.9	Co-operation with Police and Child Protections Investigations and Procedures	61
4.9.1	Police and Social Work Interviews	61
4.9.2	Information and Participation	62
4.9.3	Child Protection Case Conferences	62

4.10	Advice on Specific Circumstances	62
4.10.1	Work Placements, Community Service and Voluntary	62
4.10.2	Volunteering by Pupils	63
4.10.3	Information Technology, Mobile Phones, Texting and Digital images	64
4.10.4	Residential visits, School Trips Abroad and Outdoor Education	64
5.	SIGNS OF POSSIBLE CHILD ABUSE	65
1	Physical Abuse	65
2	Physical Neglect	65
3	Non-Organic Failure to Thrive	66
4	Emotional Abuse	66
5	Sexual Abuse	67
5(i)	Behavioural	67
5(ii)	Physical/Medical	68
6.	CONFIDENTIALITY	70
7.	CODE OF CONDUCT FOR STAFF	72
7.1	Interaction with Pupils	72
7.2	Opportunities	73
7.3	Key Principles	73
7.3.1	Physical Contact and Restraint	74
7.3.2	Verbal Remarks	74
7.3.3.	Attachments	74
7.3.4	Meetings	75
7.3.5	Climate	75
7.3.6	Training	75
7.4	Inappropriate or Abusive Behaviour	75

Appendix 1 Children and Vulnerable Adults - Definitions	77
Annex A The Law and Sexual Relationships - Under-age and Same Gender Sexual Relationships, Indecent Assault and Rape	79
Annex B Children/Young People with Sexually Inappropriate/Harmful/Abusive Behaviours	90
Annex C Information Technology, Mobile Phones, Texting and Digital Images	93
Annex D Residential Visits Including School Trips Abroad and Outdoor Education	97
BIBLIOGRAPHY AND LEGISLATION	100

1. INTRODUCTION

All children have the right to be protected. Child abuse is no respecter of class or wealth. People who abuse children do not necessarily look like 'abusers'. They may be otherwise quite ordinary and respectable; a fact that makes it very difficult for the children they abuse to be believed or to find help.

These are unpalatable facts. There is an instinctive desire to dismiss them out of hand. Those who have dedicated their lives to caring for and educating children may find it extremely difficult to appreciate that some people neglect or seek to harm children, even their own children, or to use them for their own sexual gratification. There is a temptation to deny that child abuse exists. It may be even more difficult for them to appreciate that some individuals are drawn to professions such as teaching and other school related employment precisely because it affords opportunities for pursuing their own gratification through access to children.

Where a caring adult is faced with concerns about a particular child, fear as well as denial may come into play. What can or should that adult do to find out whether the suspicions are justified? If he or she makes a report to police or social work, and the suspicions turn out to be unfounded, what would the implications be for the child, the family, the school and the adult who made the report? If the adult does nothing, he or she may on the other hand be left with fears of having let the child down, and the child may continue to suffer in silence. Where a work colleague is suspected, loyalty to that person may make raising the issue especially difficult.

All adults who have the charge or care of children have a responsibility to ensure that the children in their care are not harmed. This applies to teachers generally, but with added force to schools with a boarding facility. The Children (Scotland) Act 1995 gave a statutory focus to that responsibility by placing upon the managers of independent boarding schools a duty to safeguard and promote the welfare of children resident in their schools. The Protection of Children (Scotland) Act 2003, which came into force in 2005, strengthens the duty on schools and on all persons in child care positions to protect children from harm or from being at risk of harm. HM Inspectors of Education and the Scottish Care Commission undertake a programme of inspections to determine whether children's welfare is adequately safeguarded, particularly in schools with residential provision.

In order to fulfil their responsibilities, all independent schools need to have rigorous child protection procedures in place. A designated senior member of staff should be appointed as the Child Protection Co-ordinator to be responsible for co-ordinating the procedures, for

ensuring that every member of staff has a personal copy of the written procedures, that they have training in application of the procedures and that parents and pupils are made aware of the procedures.

Pupils should be advised that it is legitimate for them to raise with staff concerns about their own safety. Parents should be advised that it is legitimate for them to express concerns to the Child Protection Co-ordinator, the Head or the Board of Governors if they feel that a child may be being abused or is at risk of harm.

2. SCOTTISH LAW, RIGHTS AND RESPONSIBILITIES

2.1 Children's Rights to Protection and Care

The proposals for reform of child care law in Scotland, which led to the passing of the Children (Scotland) Act 1995, are based on principles drawn from the 1989 United Nations Convention on the Rights of the Child, as well as the recommendations of a number of government bodies and inquiries. The European Convention on Human Rights (ECHR) and the Human Rights Act of 1998 uphold similar principles.

Key Principles:

- Every child should be treated as an individual.
- Children have the right to express their views about any matter or decision affecting them and to have their views taken into account according to their age, maturity and level of understanding.
- All actions concerning a child should take full account of the child's best interests.
- Every effort should be made to preserve the child's family home and contacts, unless such contact would be harmful to the child.
- In decisions relating to child protection every effort should be made to keep the child in the family home, providing that is consistent with the child's welfare. Children should only be separated from their parents if it is in the child's best interest.
- Parents should normally be responsible for the upbringing and care of their children and should share that responsibility with each other.
- Children, whoever they are and wherever they live, have the right to be protected from all forms of abuse, neglect and exploitation.
- Every child has the right to a positive sense of identity.
- Any intervention in the life of a child or family should be on formally stated grounds, properly justified and made in close consultation with the

parents/guardians and all the relevant parties. There may be exceptions to parental involvement where this is not in the best interest of the child.

- Young people and children living away from home should be given a clear statement of their rights and responsibilities. They should be involved in decisions affecting them and in the provision for their care. Their rights should be consistently respected. Young people and children should feel safe and secure in any care setting. They should have a confidential means of making complaints.

2.2 The European Convention on Human Rights (ECHR)

None of the Articles below is absolute and the state can justify interference if certain conditions are met.

2.2.1 Article 2 Right to life

Everyone has the right to have his life protected by law.

Article 3 Prohibition of torture

No one shall be subjected to torture or to treatment or punishment that is inhuman or degrading.

Both Articles 2 and 3 would justify intervention to protect a child from alleged or actual abuse.

Article 8 Right to respect for private and family life

Everyone has the right to respect for his private and family life, his home and his correspondence.

Although there have been concerns that, as a result of this Article, child protection measures will be interpreted as an illegitimate interference in the private and family life of the parents, the Article also applies to children themselves. Concern for the private life of the child may justify interference by the state in certain circumstances.

Article 14 No one shall be discriminated against

The enjoyment of rights and freedom shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin.

2.2.2 Independent Schools and Human Rights

Although independent schools are not public bodies as defined in the Human Rights Act (1998), there is a clear expectation that they respect and uphold the principles of the human rights legislation. In this context schools should:

- consider the balance of rights between individuals, particularly where those rights may be competing;
- ensure proportionality in all circumstances;
- evidence judgements and decisions;
- record all decisions and actions fully at every stage.

2.2.3 Minority Ethnic Groups

It is important to promote an inclusive ethos where all members of the school community, whatever their gender, race or religion, are valued equally.

In child protection issues, when a child is from a minority ethnic group, care should be taken to:

- take account of the relevant cultural differences in communication and context, whilst at the same time applying the child protection thresholds.
- where appropriate, assess and overcome any difficulties with language, with the use of an interpreter.

2.3 Protecting Children and Young People in Scotland

In 2004 the Scottish Executive produced The Children's Charter and made a pledge to children in Scotland who are at risk of abuse or neglect. The Framework for Standards was developed to help put the commitments made to children into practice.

2.3.1 The Children's Charter

The 13 statements below reflect the needs and expectations of children and young people who may be at risk.

Get to know us	Think about our lives as a whole
Speak with us	Think carefully about how you use information about us
Listen to us	Put us in touch with the right people
Take us seriously	Use your power to help
Involve us	Make things happen when they should
Respect our privacy	Be responsible to us
Help us be safe	

2.3.2 The Pledge to Children

In response to the Charter, the Scottish Executive made the following 11 pledges to children at risk of abuse or neglect:

You will:

- get the help you need when you need it;
- be seen by a professional such as a teacher, doctor or social worker to make sure you are all right and not put at more risk;
- be listened to seriously, and professionals will use their power to help you;
- be able to discuss issues in private when, and if, you want to;
- be involved with, and helped to understand, decisions made about your life; and
- have a named person to help you

and those helping (including school staff) will:

- share information and protect you;
- minimise disruption to other parts of your life;
- work together effectively on your behalf;
- be competent, confident, properly trained and supported; and
- rigorously monitor services to continually improve how and what is done to help you.

2.3.3 Framework for Standards

The National Framework for Standards was published by the Scottish Executive in 2004 to help staff who work with children and families to deliver the pledges. The following 8 standards set out minimum expectations and provide schools and staff with a means to evaluate their own performance.

- Standard 1** Children get the help they need when they need it
- Standard 2** All professionals, including school staff, take timely and effective action to protect children
- Standard 3** All professionals, including school staff, ensure children are listened to and respected
- Standard 4** All agencies and professionals, including schools and school staff, share information about children when it is necessary to protect them
- Standard 5** All agencies and professionals, including schools and school staff, work together to assess needs and risks and develop effective plans
- Standard 6** All professionals, including school staff, are competent and confident
- Standard 7** All agencies, including schools, work in partnership with members of the community to protect children
- Standard 8** All agencies, individually and collectively, including schools and their partners, demonstrate leadership and accountability for their work and its effectiveness

2.3.4 Scotland's Commissioner for Children and Young People (SCCYP)

The SCCYP was set up in 2004 to promote and safeguard the rights of children and young people living in Scotland. A key role for the Commissioner is to ensure that adults keep the promises made in the UN Convention on the Rights of the Child. The Commissioner has powers to require persons or organisations to attend a public investigation if there are serious concerns about the safety of children. (www.sccyp.org.uk)

2.4 The Responsibility of Adults

2.4.1 Criminal Liability

Any person who is over 16 years of age, and who has parental responsibilities¹, charge or care of a child under 16, has certain responsibilities with regard to that child's welfare, and can be held criminally liable for failure to meet them.

Section 27 of the Children and Young Persons (Scotland) Act 1937 identifies those persons who would be regarded as having 'charge or care.' Those presumed to have 'charge' of a child include "a person to whose charge a child or young person is committed by any person who has parental responsibilities in relation to him." Those presumed to have 'care' include "any other person having actual possession or control of a child or young person."

The Head and staff of day and boarding schools would fall within the definition of those having 'charge' or 'care' of a child. The governors might also be regarded as having 'charge' to the extent that they are responsible for ensuring that the school environment is adequate to protect children from foreseeable suffering or harm. There is also a common law duty of care on any person who has day-to-day care or control of children, to protect and safeguard the well-being of the children in their care.

With increasing awareness of the vulnerability of children to abuse by other children and by staff, it is incumbent upon those in charge to ensure that procedures are in place which minimise the risk to children, and facilitate early identification of abuse where it has occurred. This applies particularly to those who have children in residential care.

Criminal liability arises under section 12 of the Children and Young Persons (Scotland) Act 1937 if the adult "wilfully assaults, ill-treats, neglects, abandons, or exposes him ...in a manner likely to cause him unnecessary suffering or injury to health". This includes mental as well as physical health. It applies whether or not any harm actually occurred. It is sufficient that it was 'likely' to occur. If this "likelihood ...was obviated by the action of another person", an offence might still have been committed. The offence applies not only to those who actually neglect or assault children, but also to those who 'caused or procured' the offence.

¹ Paragraph 2.6 below gives more information on whom the law regards as having 'parental responsibilities'

2.4.2 The Law and Parental Chastisement

The Criminal Justice (Scotland) Act 2003 clarifies that a person may claim that an act was physical punishment carried out in exercise of a parental responsibility or of a right derived from having charge or care of the child. Courts will need to consider:

- the nature of what was done, the reason for it and the circumstances in which it took place
- its duration and frequency
- any effect whether physical or mental which it has been shown to have had on the child
- the child's age
- the child's personal characteristics including sex and state of health at the time
- the intent of the parent or carer

If action to the child involved:

- a blow to the head
- shaking, or
- the use of an implement

then the court must determine that it was not something that even as part of a parental right or responsibility could be determined to be a justifiable assault.

2.4.3 Corporal Punishment

There is a specific exception to the offence of wilful assault where it is regarded as lawful physical punishment. The extent of lawful physical punishment has been much reduced through Acts of Parliament and decisions of the Scottish and European Courts. The European Court prohibited any punishment that would be regarded as 'inhuman or degrading', taking into account the age, sex and vulnerability of the child. The Standards in Scotland's Schools Act 2000 states that there is no justification for corporal punishment to be given to any pupil by a member of staff or any other person in the school, thereby ending the practice of corporal punishment in all schools.

2.4.4 Protection of Children's Welfare

In addition to these long-standing criminal sanctions which tend to focus on what one should not do, or should prevent, the Children (Scotland) Act 1995 places a statutory duty upon the managers of schools where residential accommodation for pupils is provided, to "safeguard and promote the welfare of the child or young person while he is so accommodated". The responsibility to report child abuse would be covered by this duty. Her Majesty's Inspectors of Education and the Scottish Care Commission are required, through their powers of inspection, to ensure that the duty adequately to safeguard children's welfare is carried out.

The Protection of Children (Scotland) Act 2003 puts a requirement on all schools to refer persons, whether paid or unpaid, to the Disqualified from Working with Children List (DWCL), if such persons are found to be unsuitable to work with children, i.e. if they have harmed children or put children at risk of harm. The Act also makes it an offence for such persons to work, or seek work, in a child care position and for organisations knowingly to employ such persons to work with children, in either a paid or unpaid capacity. All persons working with children therefore have to be checked through Disclosure Scotland to ensure that schools and other organisations do not employ unsuitable persons (see Disclosure Checks 3.2.1).

2.4.5 16-18 year olds

The law is not consistent in its classification of young people aged 16 to 18. Sometimes they are seen as adults and at other times as children.

Current child care legislation, contained in Part II of the Children (Scotland) Act 1995, reflects this inconsistency. Local authority responsibilities to support children and their families apply until the 'child' is 18. A local authority can also apply to the court for an order giving it parental responsibilities in relation to a 'child' up to the age of 18. Where the children's hearing is involved, the Act defines a child broadly as anyone under 16, or anyone between 16 and 18 who is subject to a children's hearing supervision requirement.

Child protection measures outwith the children's hearing system might also be considered for some vulnerable children up to the age of 18.

For the purposes of criminal procedures, the special measures applicable to children who are arrested or detained under section 15 of the Criminal Procedure (Scotland) Act 1995 apply only up to the age of 16.

The duty under the Children and Young Persons (Scotland) Act 1937 Act applies only to those under 16, while the welfare duty set out in the Children (Scotland) Act 1995 in relation to children in residential schools applies up to 18.

Schools should work on the basis that they have responsibilities for the welfare of young people from 16 to 18. Pupils aged 18 or over are legally adults.

2.5 Boarding/Residential Schools

Children living away from home for significant periods of time are often more vulnerable in a variety of ways:

- lack of strong family contacts may result in a readiness to form close emotional attachments to peers and adults;
- emotional or academic stress can result in young people developing self harming behaviours including substance misuse and eating disorders;
- close and sustained contact with peers may result in their succumbing to peer pressure, becoming the victim of bullying or themselves indulging in bullying;
- the balance between supervising free time and promoting young people's independence may result in young people becoming involved in potentially risky activities in their leisure time, without the risks having been fully assessed.

Such vulnerability can result in children becoming the victims of abuse by themselves, by their peers or by adults, known and unknown to them.

As part of their induction packs, all boarding schools and hostels should provide clear information on sources of support for pupils who are unhappy or feel threatened. As well as including school-based contacts, these should include:

- the contact number of ChildLine (08000 1111);
- the contact number/access to an independent visitor and/or visiting governor;
- the contact number of the local authority's children's rights officer, and
- a copy of the school's complaints procedure.

In addition boarding schools should ensure that:

- pupils are enabled effectively to sustain family contacts through a range of methods including telephone, fax and e-mail, thus reducing feelings of isolation;
- accommodation arrangements, including toilets, showers, and sleeping facilities have regard for pupils' rights to dignity, privacy and personal space;
- staff have in place good formal and informal methods of monitoring the welfare of the pupils in their care. These should include an adequate supervision ratio (the nature of which will vary depending on the age of the young people and the lay-out of the premises), regular individual and group meetings and informal observation at meal times and in free time;
- the residence has in place good monitoring procedures for pupils' eating and sleep patterns, to assist early identification of such difficulties as eating disorders or substance abuse;
- where pupils leave the site in their free time, there are robust procedures in place to know the whereabouts of the pupils, the activities involved and the expected time of return, with whom they are in contact and whom they are meeting. If appropriate, a risk assessment should be carried out or if it is a regular outing then a generic risk assessment should be done by the school and reviewed as and when necessary. Care should be exercised over activities such as attendance at parties, details of which are vague, or baby-sitting where arrangements need to be in place for the young person to return to the residence. Particular checks should be made on whether pupils are accessing internet cafes (see also Annex C).
- activities with a strong group ethos, such as cadet forces, pipe bands and sports teams, do not make pupils feel excluded and do not involve inappropriate initiation;
- in circumstances where sexually inappropriate or sexually harmful behaviours are identified, there is a need to address matters openly, seeking help for both parties from other relevant agencies, drawing on the specialist skills of social work services, specialist health services and psychology where appropriate (see also Annex B).

2.6 'In Loco Parentis' and Delegation

Although the phrase 'in loco parentis' is frequently heard, and has been referred to judicially in relation to chastisement of children, it is not a concept that has any great history in Scottish law. Those who take over the charge of a child certainly undertake responsibilities and this may give them some limited and temporary powers, which can be enlarged by specific delegation by the parent. However, the fact that they may be in the position of a parent, does not give them all the rights of a parent.

The Children (Scotland) Act 1995 clarifies who has parental responsibilities and rights for their children. The intention of the Act is that in the event of divorce, both parents will continue to exercise responsibilities and rights for the benefit of their children; both parents would normally have equal rights, unless there was a court order removing such rights, to information on their children's education. The Family Law (Scotland) Act 2006 amended section 3 of The Children (Scotland) Act 1995 by extending parental rights and responsibilities to those unmarried fathers, who after 4 May 2006, register the birth of their child jointly with the mother. The Act also introduced some legal rights and safeguards for cohabiting couples and their children. If this is a significant issue in any particular case, you should seek legal advice.

The 1995 Act states that children should be consulted and that parents should so far as practicable, consider their children's views before taking any major decisions which would affect them. Children over 12 are presumed in law to be old enough to express views, depending on their level of understanding, other known facts and circumstances.

Section 5 of the Children (Scotland) Act 1995 says that, where a person has care or control of a child but does not have parental responsibilities, that person can do what is necessary to safeguard the child's health, development and welfare. The Act specifically says that this provision does not apply to a person who has care or control of a child in a school. This means that, whilst schools have responsibilities towards children, they cannot rely on the general authority given by Section 5 to fulfil their responsibilities. They need to have authority delegated by the parent.

The position of schools is strengthened by section 3(5) of the Act which puts the 'delegation' of parental responsibilities onto a proper legal footing. The Act provides that a person who has parental responsibilities or rights in relation to a child shall not abdicate those responsibilities, but may arrange for some or all of those responsibilities to be carried out by someone else on his/her behalf. This means that, if a parent has delegated responsibility to a 'guardian', the school can feel confident in accepting the 'guardian's' authority for action consistent

with the welfare of the child which is within the scope of that delegation. In most instances parents, unless they or a member of their family, are involved in allegations of abuse, should be informed of concerns about their children, involved in discussions and advised of action taken.

In the context of consent to medical examination and treatment (which is discussed further at paragraph 2.12), the delegation of responsibilities means that staff of boarding schools do not have any automatic right to consent to the medical examination or treatment of a child, unless in an extreme emergency. Where a child cannot give his or her own consent, the school needs delegation of rights by the parent or other person with formal parental responsibility, or the authority of a person whom the parents have authorised to make that decision.

2.7 What is Child Abuse?

Although attention tends to focus on the sexual abuse of children, it is only one of the recognised categories of child abuse. Child protection guidance suggests that for an act or omission to be abusive and/or to present risk to the child, three elements must be taken into account:

- whether there is demonstrable damage or harm to a child or a prediction of harm to the child;
- whether the injury/state of the child would have been avoidable through action by parents or carers responsible for that child;
- **whether the potential harm or future risk is linked to the action or inaction of the parent or other carer.** This would also apply where it was not possible to establish the identity of the perpetrator.

To supplement this general definition, child abuse can fall into different categories of child abuse, although there can be overlap and interaction amongst the categories and a case of child abuse may not always fit neatly into one category.

Physical Injury

Actual or attempted physical injury to a child, under the age of 16², where there is definite knowledge, or reasonable suspicion, that the injury was inflicted or knowingly not prevented.

² All categories of abuse – in certain circumstances, such as children with additional support needs (a mental or physical disability) or children subject to supervision requirements, the upper age limit may be extended to 18.

Physical injury may include a serious incident or a series of minor incidents involving bruising, fractures, scratches, burns or scalds; deliberate poisoning; attempted drowning or smothering; serious risk of or actual injuries resulting from parental lifestyle prior to birth, for instance substance abuse; physical chastisement, deemed to be unreasonable.

Domestic Violence

The effect of domestic violence on children is such that it must be considered as abuse. Either witnessing it or being the subject of it is not only traumatic in itself but is likely to have an adverse impact on a child's behaviour and performance at school. Schools may see changes of behaviour or attendance patterns in pupils affected by domestic violence and should seek advice from their Child Protection Co-ordinator.

Parental Substance Abuse

Drug and alcohol abuse by parents can have a serious effect on their children. There is an increased risk of violence in families where parents abuse substances. Children can suffer from lack of boundaries and discipline and live chaotic lives. This can seriously affect their psychological and emotional development and may cause problems with relationships in later life. Some children will suffer physical and emotional neglect where parents are unable to focus on their needs when under the influence of drugs or alcohol for regular or considerable periods. Where incidents suggest that the child may be the victim of emotional/physical and/or sexual abuse, the principles and procedures in these guidelines should be followed. Schools may also need to refer to specific guidance for incidents involving drugs and drug misuse.

Sexual Abuse

Any child below the age of 16 may be deemed to have been sexually abused when any person(s), by design or neglect, exploits the child, directly or indirectly, in any activity intended to lead to the sexual arousal or other forms of gratification of that person or any other person(s) including organised networks. This definition holds whether or not there has been genital contact and whether or not the child is said to have initiated the behaviour.

Sexual abuse may include activities such as incest, rape, sodomy or intercourse with children; lewd or libidinous practices or behaviour towards children; indecent assault of children; taking indecent photographs of children or encouraging children to become prostitutes or witness intercourse or pornographic materials.

Activities involving sexual exploitation, particularly between young people, may be indicated by the presence of one or more of the following characteristics - lack of consent; inequalities in terms of chronological age; disability; developmental stage or size; actual or threatened coercion or force.

Non-Organic Failure To Thrive

Children who significantly fail to reach normal growth and developmental milestones, (i.e. physical growth, weight, motor, social and intellectual development) where physical and genetic reasons have been medically eliminated and a diagnosis of non-organic failure to thrive has been established. Medical assessment of failure to thrive will always be necessary before decisions can be made about any risk to the child.

Factors affecting a diagnosis may include inappropriate relationships between the carer(s) and the child, especially at meal times, for instance the persistent withholding of food as a punishment and the sufficiency and/or suitability of the food for the child. In its chronic form, non-organic failure to thrive can result in greater susceptibility to more serious childhood illnesses, reduction in potential stature, and with young children particularly, the results may be life threatening over a relatively short period.

Physical Neglect

This occurs when a child's essential needs are not met and this is likely to cause serious impairment to physical health and development. Such needs include food, clothing, cleanliness, shelter and warmth. A lack of appropriate care results in persistent or severe exposure, through negligence, to circumstances which endanger the child.

Physical neglect may also include a failure to secure appropriate medical treatment for the child, or when an adult carer persistently pursues or allows the child to follow a lifestyle inappropriate to the child's developmental needs or which jeopardises the child's health.

Physical injury of a child, giving rise to suspicions of abuse, may be clearly visible in some cases. In other cases, and regarding other categories of abuse, staff must be alert to indications that a child may be being abused. All staff should familiarise themselves with the indicators of possible abuse set out in section 5.

It should be borne in mind that abuse may in some cases be being perpetrated by another child rather than an adult.

Emotional Abuse

Failure to provide for the child's basic emotional needs so as to have a severe effect on the behaviour and development of the child.

This may include situations where as a result of persistent behaviour by the parent(s) or carer(s) children are rejected, denigrated or scape-goated; inappropriately punished; denied opportunities for exploration, play and socialisation appropriate to their stage of development or encouraged to engage in anti-social behaviour; put in a state of terror or extreme anxiety by the use of threats or practices designed to intimidate them; isolated from normal social experiences, preventing the child from forming friendships.

Children who are left on their own for long periods, are understimulated or suffer sensory deprivation, especially in infancy; who do not experience adequate nurturing or who are subject to a large number of care-givers, may also come into this category.

Sustained or repeated abuse of this type is likely, in the longer term, to result in failure or disruptions of development of personality, inability to form secure relationships and may additionally have an effect on intellectual development and educational attainment.

Bullying

Bullying is a form of abuse, where deliberately hurtful behaviour is repeated over a period of time, and where the victim may find difficulty in defending him/herself. Under no circumstances should staff ignore such behaviour; in most instances anti-bullying procedures should be able to address the issues without resort to formal child protection procedures.

However, sustained bullying can be profoundly damaging to the victim, and has been known to result in attempted, and actual, suicide. Where a pupil's bullying behaviour is persistent and does not respond to the school's normal anti-bullying strategies, the child protection procedures can be invoked. In these circumstances the principles and procedures in these guidelines should be followed.

The Internet/Grooming

The downloading or creation of indecent images is a sexual offence. There are dangers for children being allowed to access chat rooms as they may be targeted by adults who are posing as young people. Child protection concerns arise when the young person arranges to meet the person they have been

chatting to on the internet, as that person may have been grooming the young person which can lead to children being sexually abused. Under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 it is a legal offence to attempt to groom a child for sexual activities through the internet.

Factitious or Induced Illness Syndrome (FIIS) and Factitious or Induced Illness Syndrome by a Parent or Carer (previously known as Munchausen's Syndrome or Munchausen's Syndrome by Proxy).

An adult suffering from FIIS characteristically presents themselves at hospitals with symptoms of physical disease and may have undergone many medical or surgical procedures. They appear to seek the security and support of the medical environment and are driven by masochistic urges and ambivalence to the source of their support.

In FIIS by a Parent or Carer, the adult uses the child to obtain medical attention by creating medical symptoms in the child, often induced by dangerous procedures; these can include for example, asphyxiation or poisoning, or ensuring that a series of invasive tests and/or operations are carried on the child. Children that are affected by this form of abuse can have a greater frequency of illness than other children, combined with a higher than normal level of absences from school.

Female Genital Mutilation

This form of physical abuse involves female mutilation through female circumcision, excision or infibulation. The Female Genital Mutilation (Scotland) Act 2005 made female genital mutilation an offence except on specific physical and mental health grounds and makes it illegal to take a girl or woman abroad for the purpose of female genital mutilation. There is a duty on medical staff to report such circumstances.

2.8 The Legal Implications of Child Abuse

2.8.1 Criminal and Child Protection Processes

It is important to understand that there are two separate legal processes that can follow on from a suspicion that a child has been abused.

Child abuse is a criminal offence. A report to the police will result in an investigation by them and may lead to the prosecution of the alleged offender. Because child abuse is often carried out in secret, with no witnesses other than the child, it can be very difficult to satisfy the rigorous standards of beyond reasonable doubt required by the criminal courts with regard to evidence.

Child abuse is also the concern of the child protection system. This focuses on the Children's Hearing (see section 2.8.2) rather than the criminal courts and its aim is not to punish but to protect and promote the well-being of children. Procedures are more informal, and standards of proof are less rigorous than in the criminal courts. Children's Hearing cases generally require only to be proved 'on the balance of probability' as opposed to the higher standard of 'beyond reasonable doubt' applicable to criminal cases. This means that the Children's Hearing can take action to protect a child even when no prosecution is initiated or no conviction obtained.

Where an allegation gives rise to a criminal or a child protection investigation, there is official encouragement for the agencies involved to work together so far as possible. Each local authority has inter-agency guidelines, produced under the auspices of the local Child Protection Committee, which set out the basis for their joint or collaborative work. The guidelines usually indicate that, where a report is made to the social work department on the basis that a child requires protection, they should involve the police at an early stage if it appears that a crime may have been committed. Local authorities, social services, health boards, the police and other agencies all have significant responsibilities for the protection of children.

2.8.2 The Children's Hearing System

The Scottish Executive agreed in 2004 to review the Children's Hearing system, retaining its fundamental principles, while developing and improving the system. The system as it currently operates is described below – for updated information refer to www.childrens-hearings.co.uk.

Scotland has a unique child protection system based on the Children's Hearing (or Children's Panel). In the area of each local authority there exists a panel of persons appointed to sit as members of Children's Hearings. They are ordinary members of the public who receive training to equip them for their task.

The task of a Children's Hearing is to decide upon whether a child referred to it requires 'compulsory measures of supervision'. This could mean voluntary support or occasional home visits by a social worker, or it could involve removal of the child from home, and placement with relatives or friends, with foster parents or in a children's home or residential school.

A pivotal figure in the Children's Hearing system is the Children's Reporter. He or she is an independent figure, employed by the Scottish Children's Reporter Administration and responsible to the Principal Reporter. The Reporter has statutory responsibilities for the protection and well-being of all children and has

wide discretionary powers and a large measure of independence. The Reporter is independent of the social work department.

Anyone who has concerns about a child can refer the matter to the Reporter. If concerns come to the attention of the social work department, they are obliged by law to make such preliminary investigations as they think necessary, and to pass that information to the Reporter if they consider that the child may need compulsory measures of supervision.

The law sets out certain conditions, known as grounds for referral, one of which has to be satisfied before a Children's Hearing can consider a case. These include situations in which a child is thought to have been abused or neglected. A Children's Hearing can consider the case only if both the parents and the child agree that a ground for referral is satisfied, or it is found established in the sheriff court after proof.

From whichever source information is received, the Reporter must make any further inquiries that he or she thinks necessary. This might, for example, involve seeking information from the child's school. The Reporter then has three options:

- to take no further action; even if the grounds for referral are satisfied, it is open to the Reporter to conclude that compulsory measures of supervision are not required.
- to refer the case to the social work department for voluntary assistance, usually with the agreement of the child and family.
- to refer the matter to a Children's Hearing.

The Children (Scotland) Act 1995 gives children and their parents (or, strictly speaking, their 'relevant persons') both a right and a duty to attend the Children's Hearing. Children who fail to attend or are unlikely to turn up can be made subject to a warrant to ensure that they are kept in a place of safety and brought before the hearing. 'Relevant persons' who fail to turn up can be fined. Children's Hearings can release the child or 'relevant person' from the obligation of attending in some circumstances. An indication of the Hearing's view on this matter may be given by a business meeting of children's panel members held some time before the actual Hearing.

Even if they are exempted from the obligation of attendance, both child and 'relevant person' have a right to attend the Hearing. In the child's case, this right is absolute. In the 'relevant person's' case, the Hearing is entitled to exclude that person from any part of the Hearing if their presence is causing

distress to the child, or if the Hearing feel this is necessary to allow the child to express his or her views to them. In this case, the Hearing must subsequently explain to the 'relevant person' the substance of what has taken place in their absence.

'Relevant persons' in relation to a child are those with parental responsibilities or rights and those who ordinarily have charge of or control over the child other than by reason of their employment. This means the category would not normally include staff of schools, even residential schools. It probably would include persons to whom parents had delegated parental responsibilities, for example, the 'guardians' appointed to make decisions about children whose parents live abroad.

In addition to their responsibilities to attend, 'relevant persons' have rights to receive sensitive information about a child who is brought before a Children's Hearing and have full rights to participate in decision-making and to challenge decisions. It is important that parents and 'guardians' appointed by them are aware of the potential implications of the appointment.

2.9 Is there a Legal Duty to Report Suspicions of Child Abuse?

Police officers and designated local authority employees (normally social workers) have a legal duty to pass information to the Reporter if they consider that a child may need compulsory measures of supervision. Police also have a legal duty to pass information to the Procurator Fiscal in connection with the commission of offences.

In extreme cases, for example when there are suspicions that a child might be being abused in a boarding establishment, and these are not investigated, this could constitute criminal neglect. With regard to other cases the law is not so clear. It may be that a child could take action against a teacher for failing to act upon the child's disclosure or upon justified concerns which had been expressed to the teacher. Similarly, an action could be raised against an individual, or more likely a school, for encouraging, or turning a blind eye to, or failing to protect a child from bullying.

The importance given to child protection requires to be taken very seriously by all schools. Teachers employed by local authorities are generally advised by their employers to follow local guidelines with regard to reporting suspicions of abuse. Similarly independent schools need to have guidelines in place, so that all staff are aware of their professional obligations. In the area of child protection, staff should work closely with the social services, health authorities, police and other agencies. **The best protection a school can have against future legal action is to ensure that there are well**

thought out procedures which are known by staff, parents and pupils and that staff and governors have been trained in them.

2.10 Actions for Defamation

Concerned adults are sometimes reluctant to report suspicions of abuse for fear that the person suspected will sue them for defamation if the allegation turns out to be unfounded.

To be defamatory, a statement must first of all be untrue. Even if subsequently shown to be untrue, the statement will be protected by 'qualified privilege' if it is made to the appropriate authority "in response to a duty, whether legal, moral or social or in the protection of an interest."³ Unjustified repetition of the allegations to other persons will not be protected by privilege.

The qualification on privilege refers to statements motivated by malice. If a statement, even to the appropriate authority, can be shown to be not only untrue, but motivated by malice, then an action of defamation could be successful.

Parents and governors concerned about defamation in particular circumstances are advised to seek legal advice.

2.11 Breach of Confidence

If certain conditions are met, information may be regarded as confidential, and passing it on without permission could lead to an action for breach of confidence. The law on this subject is not wholly settled, but it would seem likely that information would be regarded as confidential if:

- the information disclosed was confidential in character (not, for example, a matter of public record, such as a person's age);
- disclosure has or would cause actual harm to the person whose confidence was breached; and
- one could infer from the circumstances that the confider did not want the information passed on

If all of these conditions are satisfied and an action is raised for breach of confidence, it would be a defence to show that the information was passed on

³ Norrie Kenneth McK Defamation and Related Actions in Scots Law (1995)

in pursuit of the public interest. As there is a clear public interest in the protection of children, it is difficult to envisage any such action succeeding.

Schools can best protect themselves by having a clear policy on confidentiality, which takes account of legal and professional obligations, and is made known to governors, staff, parents and pupils.

2.12 Consent to Medical Examination and Treatment

The law on consent to medical examination and treatment was changed in 1991 with the introduction of the Age of Legal Capacity (Scotland) Act. This says that any young person aged 16 or over has a right to consent or to refuse consent to their own examination or treatment. A child under 16 can also give valid consent:-

“where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment.”

The decision about competence is entirely one for the doctor or other medical practitioner to make. If the child is assessed as being able to give his or her own consent, then it is the child's consent that must be obtained. Parents and their delegates no longer have any right to make decisions on behalf of a competent child.

Where a child cannot give consent, the consent of a person holding parental responsibility would normally be required. If the child's parents are or have been married to each other, both of them have parental responsibility and either parent can give consent. If the parents have not been married to each other, until 2006 the mother had automatic parental responsibility including the right to consent, unless the unmarried parents had by deed entered into a 'parental responsibility agreement', which gave the father full parental rights in respect of the child. The Family Law (Scotland) Act 2006 amended section 3 of The Children (Scotland) Act 1995 by extending parental rights and responsibilities to those unmarried fathers, who after 4 May 2006, register the birth of their child jointly with the mother. The Act also introduced some legal rights and safeguards for cohabiting couples and their children. If this is a significant issue in any particular case, you should seek legal advice. In the case of a school which has care or control of a child, specific consent or delegation is required (see also section 2.6). Consent to treatment is effective only if the proposed treatment or procedure is 'reasonable in all the circumstances to safeguard the child's health, development and welfare'. It would not be effective if either:

- the child was competent to consent; or
- the person knew that the parent would refuse consent

Other individuals may have obtained parental responsibility by court order. If the child is 'looked after' by the local authority, the authority can give consent only if it has obtained a 'parental responsibilities order' from the court, or consent is authorised by conditions attached to various orders and warrants from the court or the Children's Hearing. Even in these circumstances, no examination or treatment can take place in the face of a refusal of consent by a competent child.

In an emergency situation, medical staff are advised that they may act without parental consent where it is necessary to save the child's life or avoid serious impairment of health.

Schools should not assume that they have authority to authorise any medical examination or treatment unless authority has been delegated to them. Where parents have appointed a 'guardian' to make such decisions on their behalf, the guardian's authority should be sought for medical procedures. Boarding schools should consider asking parents to give schools authority in writing to seek medical treatment for their children, as the absence of clear delegation could give rise to difficulties.

Schools would not normally have authority to authorise medical examination for the purpose of gathering evidence for legal proceedings. Even where schools have a written delegation of authority from the parent to authorise medical examination or treatment, care must be taken following any allegation of abuse to ensure that examinations for medical and forensic reasons are co-ordinated, and evidence safeguarded. Unless there is some urgent medical ground for examination, the school should NOT instruct one, but should refer the matter to the police or social work department who will ensure that local inter-agency child protection guidelines are followed.

2.13 Special Considerations Relating to Nursery Schools

Whilst section 5 of these guidelines sets out alerting signs of child abuse in relation to all ages of children, it must be noted that behavioural indicators are especially important with regard to younger children.

Staff and helpers in nursery schools should receive training about the nature and frequency of child abuse and the signs and symptoms which should alert them to the need for increased vigilance and monitoring with regard to a particular child and/or the need to report their concerns.

It should be noted in particular that young children may not voice complaints and may even report liking a person who is abusing them. Their distress is manifested in other ways. Abusers often 'groom' children by a mixture of threats and rewards in order to draw them into the abuse and keep them from complaining.

The maintenance of ongoing records of each child's attainments, including intellectual, social, emotional and physical development, would help to identify those children giving cause for concern.

Monitoring and supervision of large classes can also be aided by the development of a key-worker system, in which classes are broken down into smaller groups and children are allocated to a specified worker who will pay special attention to their activities and development.

2.14 Children with Disabilities and Additional Support Needs

The following points refer to children and young people with physical, communication, learning and other disabilities.

- (a) Children with developmental disabilities are particularly vulnerable and therefore at higher risk of sexual and other forms of abuse.
- (b) Children with a physical disability or a visual impairment may be at greater risk due to their lack of mobility.
- (c) Children with speech/language and hearing impairment can be more vulnerable, because they have difficulty in communicating, may not be able to tell staff or their attempts to tell may be misunderstood.
- (d) Such children may come into contact with a multiplicity of carers and care settings. Some are dependent on adults for their intimate care on a daily basis. This can make the task of distinguishing between appropriate and inappropriate touching more difficult.
- (e) Children with disabilities are often involved in intrusive medical treatments and intimate care; consequently, they may not always be able to differentiate between this and abusive behaviour.
- (f) Children with low self-esteem and a disability are more accustomed to be compliant with an adult's wishes.

Note: The Education (Additional Support for Learning) (Scotland) Act 2004 came into effect in November 2005 and introduced a new framework of support for children and young people who are, or are likely to be, unable to benefit from school education without additional support. The Act places duties on education authorities to make adequate provision for such children and independent schools need to be aware of the framework. Additional support needs can arise from a wide range of factors which cause a barrier to learning related, for example, to social, emotional, cognitive, linguistic needs or to family and care circumstances.

2.15 The Child Protection Register

In compliance with Scottish Executive guidance, each local authority maintains a Child Protection Register. The register is not regulated by an Act of Parliament. The system established is therefore administrative rather than legal in character.

Children's names are placed on the register when they are thought to require a child protection plan because there is an unacceptable risk of abuse and the need for protection is unlikely to be met by other services alone. Access to the register is strictly controlled. Arrangements for access to the register should be discussed with the social work department and referred to in a school's own procedures.

The decision to register a child is taken at a Child Protection Case Conference. This is a multi-disciplinary forum convened by the social work department. School staff have a valuable contribution to make to a case conference and should be invited to attend. If a child is registered, an inter-agency child protection plan will be formulated with the aim of monitoring the child's protection and welfare. School staff will normally be part of the core group discharged with implementing the child protection plan.

A minute of the proceedings, including any decision regarding registration and other recommendations will be circulated to all relevant agencies; the school should receive a copy whether they were represented or not e.g. if the conference took place during the summer holidays. Any such information should be treated as having been given in confidence. School staff are asked to pay particular attention to the attendance and development of all such children and to report any cause for further concern to the social work department on the day the concern arises.

The case conference has no legal powers, and registration on the Child Protection Register does not in itself have any legal consequences. No-one can be obliged to attend a case conference. If compulsory measures are required, this must be done through a legal forum, normally the Children's Hearing.

Nevertheless, the register and the associated case conferences are important in assessing and testing out concerns about a child so that appropriate protective action can be initiated.

Because the system is administrative rather than legal, neither children nor parents have a legal right to be present at case conferences; there is also no right of appeal. It is however recognised that they have an invaluable contribution to make and it is good practice to involve them so far as is consistent with the interests of the child. Case conferences can serve as an effective way of negotiating the focus of work with the child and parent.

3. GENERAL GUIDANCE FOR SCHOOLS

3.1 Preparation of Child Protection Procedures

All schools should have in place child protection procedures specific to their needs and structures. **In light of the additional advice contained in these guidelines, schools should update their current guidelines.** School guidelines can be adapted from these guidelines and should be compatible with the inter-agency procedures of their local Child Protection Committee. They should be approved by the Board of Governors and training should be provided to make governors aware of their responsibilities for child protection in the school. It is essential, for the school's own protection, that any marked deviation from these guidelines be justified on the basis that the deviations will not substantially lessen the protection afforded to children.

Schools may find it helpful to consult, through their social work department, the keeper of the local Child Protection Register, and pass him a copy of their draft guidelines for comment.

Where possible, it is suggested that parents are consulted in preparing the procedures. All parents and guardians should be made aware of the existence of the procedures and advised that they may obtain a copy on request. Pupils should also be made aware of the existence and content of the procedures, in a manner appropriate to their age and level of understanding.

The school prospectus, or other appropriate publication, should contain a reference to the school's curriculum on personal safety skills to protect children from abuse as well as the child protection procedures, making it clear that these are available on request and that parents or those considering placing their child at the school can discuss any concerns with the Child Protection Co-ordinator.

Governors and staff should be supplied with copies of the procedures.

3.2 Appointment of Staff and Governors

3.2.1 Disclosure Checks

All schools must ensure that a check on the possible criminal background of any governors, staff or persons who regularly train, supervise, care or are solely responsible for children and young persons, is carried out as part of their recruitment and monitoring procedures.

Disclosure Scotland was set up in 2002, under Part V of the Police Act 1997, to help individuals and organisations to make safe recruitment decisions. The

system enables Disclosure Scotland, through the Scottish Criminal Records Office, to disclose criminal history and non-conviction information relevant to the post that is to be filled. All schools in Scotland must register with Disclosure Scotland. Details on how to obtain checks are available on the website: www.disclosurescotland.co.uk. The checks will also cover information held by the Criminal Records Bureau (CRB) for England and Wales.

There are three levels of Disclosure: Basic, Standard and Enhanced. All persons supervising or working with children in schools, including volunteers and helpers, require an Enhanced Disclosure. **An Enhanced Disclosure is for all those in 'child care' positions whose duties regularly involve caring for, training, supervising or being in sole charge of persons under the age of 18.** All teaching appointments, non-teaching staff, governors, volunteers and others who have regular, sole or substantial access to children as part of their normal duties for the school require an Enhanced Disclosure. This might include, for example, care staff, physical sports instructors and parents who are involved in training children. Every school should designate a senior member of staff who is authorised to counter-sign Disclosure checks for the school.

3.2.2 Frequency of Disclosure Checks

The frequency of checks for existing staff and volunteers is at the discretion of the school/employer/organisation. Carrying out checks on existing staff every three to five years seems a reasonable target. Schools should make checks on:

- all new governors
- all those newly appointed to child care positions in the school
- existing staff and volunteers newly appointed to a child care position
- existing staff when the duties or responsibilities of a person in a child care position significantly change
- those already in child care positions, say, every three to five years

The requirements to check on existing staff will change when the new Vetting and Barring Scheme is implemented (see 3.2.4).

3.2.3 Protection of Children (Scotland) Act 2003

The above Act came into effect in 2005 to strengthen the safeguards for protecting children against persons, including paid and unpaid staff, unsuitable

to work with children. The Act established the Disqualified from Working with Children List (DWCL) and makes it an offence for:-

- an individual who is disqualified from working with children to apply for, offer to do, accept or do any work (paid or unpaid) in a child care position.
- an organisation to fail to comply with the duty to make referrals to the Disqualified from Working with Children List (DWCL)
- an organisation to offer work in a child care position to, or procure work for, an individual who is disqualified from working with children.

Organisations have to obtain a Disclosure check to establish if a person is disqualified from working with children.

3.2.4 Scottish Vetting and Barring Scheme

Proposals for a Vetting and Barring Scheme in Scotland were published in 2006 under which unsuitable persons will be barred from working, paid or unpaid, with children and/or vulnerable adults. The proposed scheme will build on the existing system operated by Disclosure Scotland and will be designed to provide a comprehensive, centralised, integrated and updated system to prevent unsuitable people from gaining access to vulnerable groups through their work and to ensure that those who become unsuitable are not able to remain in the workforce.

The scheme is intended to provide greater consistency of decision-making through the development of a Central Barring Unit; reduction in administration and bureaucracy as information is continuously updated without the need for a further full enhanced disclosure check whenever an individual moves to a new employer or takes on new voluntary work; continuous updating to enable the employer to be notified if an individual who has had a disclosure check becomes unsuitable; and controlled access to barred status for personal employers (e.g. parents employing private tutors or carers).

The scheme is likely to be implemented towards the end of 2007 with interim improvements to current vetting arrangements commencing during 2006. The scheme is similar to schemes proposed for England and Wales and Northern Ireland.

3.2.5 Recruitment Procedures

As a significant proportion of child abusers are not known to the authorities, schools should bear in mind that Disclosure checks are only part of the

recruitment process. It is important that effective procedures are in place for the appointment of all those in child care positions whose normal duties involve the training, supervision or care for children. **Schools should ensure that the employment history of prospective employees is checked, that their identity and qualifications are verified and that references are carefully scrutinised.** The following recommendations should be noted:

- **Applications:** Application forms should be specifically designed for the post in question, together with clear job descriptions, person specifications and information about the institution in which the job is based. The job description should contain a clear remit against which candidates' qualifications can be checked.
- **Preliminary interviews and visits:** Where possible, there should be preliminary interviews of short listed candidates and visits to the school to meet staff and pupils in advance of the formal interview. This will enable a fuller picture to be obtained of the character and attitudes of shortlisted candidates and the interaction between candidates, staff and pupils. Interviews should include a question on child protection.
- **References:** Candidates should provide full employment (and unemployment) histories, with names and addresses of present and past employers, and the name of an independent referee in addition to an employer. Employers should always approach an applicant's present employer and should reserve the right to approach any previous employer (or line manager) about a short listed candidate's character and performance before interview. Written references should be requested on the basis that referees have the job description and person specification and are encouraged to comment frankly on the short listed candidate's strengths and weaknesses in relation to their suitability to work with children.
- **Relevant Information:**

Where necessary employers should:

explore any aspects of references by telephone with a current or past employer;

keep a record of conversations with referees;

pass the information to those responsible for making the appointment;

retain records of disciplinary offences or concerns relating to a child care position.

- **Verification of Documents etc:** Employers should ask for verification of birth certificates and educational/professional qualifications. Employers should allow no unsupervised access to children before completion of all checks and these procedures should not be waived for fear of causing offence to parents or friends of staff. The overriding responsibility for schools is to protect the children in their care and genuine applicants should not be deterred by being scrutinised.
- **Trial basis:** It may be possible to appoint the successful candidate on a trial basis for the first two to three months. All new appointees should be monitored, provided with a mentor and given feedback on their performance.

3.3 Guidance on Interaction with Pupils

Allegations about improper behaviour by staff towards pupils must always be taken seriously and at least a preliminary investigation made. (see section 4.7 Allegations against Staff). Staff should always be wary of allowing situations to develop which could lead to allegations of impropriety. Section 7 sets out some guidance for staff on such matters.

3.4 Responding when a Child Tells of Abuse

Even where a school has set in place a guidance or pastoral care system, experience shows that children with a problem will choose to speak to a person they trust, who may not be the guidance teacher or the housemaster or housemistress. It is important that the adult concerned takes what the child says seriously, and avoids either interrogating the child or silencing the child by indications of disbelief.

Adults must also be wary of promising that they will keep the child's secret. Some adults rashly promise this and then find themselves in difficulties if they are faced with a disclosure that they feel they must share.

Section 4 sets out guidance for staff on responding to children when they tell about abuse.

3.5 Confidentiality

Confidentiality is an important issue for children, parents and professionals. Children and parents may wish to raise or share concerns, but may be fearful of

setting in train a sequence of events that will have far reaching and unwanted consequences. They may seek an assurance of confidentiality before expressing their concerns.

Professionals are also concerned about confidentiality because they do not want to lose the trust of those who may have sought their help in confidence. Neither do they wish to feel responsible for initiating what might be seen as 'uncomfortable' procedures. At the same time, they recognise that they have a responsibility towards the children about whom concerns are raised.

The fears of those expressing concerns and those to whom they are expressed may in some cases be based on ignorance as to what is likely to happen. Fear of the unknown can often be dispelled or lessened by knowledge and understanding. Schools should therefore become familiar with child protection procedures and build up relationships with those who operate them in their area. In this way they will be better informed themselves and better able to inform others who seek their advice or assistance. Staff should be aware that there is a presumption on the sharing of information (both within the school and with external agencies) to protect vulnerable children or children who are at risk of abuse or who have been abused; this would be even more pertinent in a boarding school. **Staff should also be mindful that there is no legislation, (including the common law duty of care, The Data Protection Act (1998) and Freedom of Information (Scotland) Act (2002), that prevents appropriate sharing of information to protect vulnerable children.**

Because of the responsibilities they have to children in their care, staff should never give an absolute guarantee of confidentiality to an adult or a child. The member of staff should not be dismissive and should seek to retain the child's trust by explaining that, whilst every effort will be made to respect a desire for confidentiality, if there are serious concerns about a child's safety and protection, it will be necessary for that information to be passed on to the appropriate authorities. It can be encouraging to reassure those seeking advice that the staff member will not breach the confidence without letting that person know that they intend doing so. This applies to children as well as adults.

A sample statement on confidentiality, for adults and children, is set out in section 6.

All staff, including non-teaching staff, have a legal, professional and moral duty to put the child's welfare first. Information about abuse may be offered in confidence, but if the child is at risk the recipient cannot keep such information

to him or herself. The information must be passed to the Child Protection Co-ordinator, who will liaise as necessary with the Head and external agencies.

Professionals and others should share information on:

- a child's health, development and well-being
- a parent who may need help or be unable to care adequately for his/her child
- those who present a risk of harm to the child

Often, it is only when such information is brought together from a number of sources that the real level of risk to a child becomes evident. Personal information about children and families held by professionals and agencies is subject to a legal duty of confidence and should not normally be disclosed without the consent of the person concerned unless it is to protect vulnerable children when it must be shared. Children are entitled to the same duty of confidence as adults, provided that they have the ability to understand the choices and their consequences relating to proposed lines of action. Where consent has not been obtained, the law permits disclosure of confidential information necessary to safeguard a child where the child is considered to be at risk. Each such disclosure should be justifiable according to the particular circumstances.

Schools should have agreed written protocols for dealing with these matters, making it clear to all staff the circumstances in which both they and other agencies may share information, and any limitations affecting such sharing, including where appropriate any implications under the Data Protection Act or Freedom of Information Act.

3.6 Staff Training

Training in matters relating to child protection is essential for everyone, including governors, involved in managing a school or who has regular contact with pupils. Heads and Child Protection Co-ordinators will also need training on the law and the operation of procedures. All staff, teaching and non-teaching, who have contact with children should receive training on:

- recognising the signs of abuse;
- responding when a child tells about abuse, or expresses a desire to talk about a private problem;

- the content and operation of the school's own child protection procedures;
- strategies to minimise risk and familiarisation with any codes of conduct. (see section 7).

3.7 Personal Circumstances

Various studies have shown that most child abuse is never formally disclosed. Schools and the Chair of Governors should therefore be alert to the possibility that some members of staff may have personal experience of child abuse and that memories of these experiences may be released by incidents in school or by child protection training. Should a member of staff disclose personal experiences, then the school and the governors should make every effort to provide appropriate support and/or direct the member of staff to other sources of help.

3.8 Appointment of Child Protection Co-ordinator (CPC)

Whilst all teaching and ancillary staff who have contact with pupils have responsibilities towards them and should receive some basic training, the protection of children and the efficient operation of the school's child protection procedures will be facilitated by the designation of a senior member of staff with special responsibility for co-ordinating child protection within the school.

The CPC has both general and particular responsibilities with regard to child protection, the key points being:-

- ensuring that all staff are aware of the school's child protection procedures and any amendments to them;
- supplying new members of staff with a written copy of the procedures, and emphasising to them the importance of paying special attention to them;
- organising staff training on child protection, including, in particular, an annual seminar for updating and refreshing staff on the procedures;
- overseeing the planning of any curricular provision designed to help children to protect themselves from the risk of abuse, for instance, by raising their awareness of the Children's Charter or calling ChildLine;

- liaison with other agencies, e.g., police, social work, the Children's Reporter and other government and local authority departments on general issues relating to child protection;
- listening and responding to general concerns raised by staff, pupils and parents/guardians in relation to child protection, for instance, by informing parents of the school's policy on confidentiality (see section 6);
- co-ordinating action within the school and, where relevant, in boarding accommodation in relation to specific children about whom concerns have been raised;
- delegating responsibilities to the most appropriate person, e.g., in situations where the CPC may not be the most appropriate person to support a particular child when an allegation has been made;
- ensuring they receive regular updated training;
- reviewing the policy at regular intervals;
- auditing and quality assuring child protection at regular intervals.

In small schools, it may be appropriate for the Head to be the Child Protection Co-ordinator. Whoever is appointed should receive training, at the earliest opportunity, to equip them for the task. It is advisable for the Child Protection Co-ordinator to have a recognised depute and a contact number for out-of-school hours. This could be important in cases of illness, leave or where allegations are made at weekends or in the holidays (or where allegations are made that involve the Child Protection Co-ordinator).

3.9 The Contribution of the Curriculum to Personal Health and Safety and Anti-Bullying

The curriculum should help children to develop life skills, knowledge, understanding and informed attitudes to protect themselves from all forms of abuse.

When teaching topics of a sensitive nature, for example sex education, race relations, teachers should take care that the materials, and the reasons for using them, are not capable of misinterpretation. If in any doubt about the suitability of the materials, advice should be sought from a senior colleague or from the Head.

Schools should have a health programme in place which promotes good health and protection from illness and disease. Where appropriate, these programmes should involve partnership with parents and guardians. Schools should also have personal safety programmes for children, appropriate to their age, to raise awareness about abuse and to help them to protect themselves. Programmes should include strategies to combat bullying, with guidance for children and families on putting anti-bullying programmes into practice.

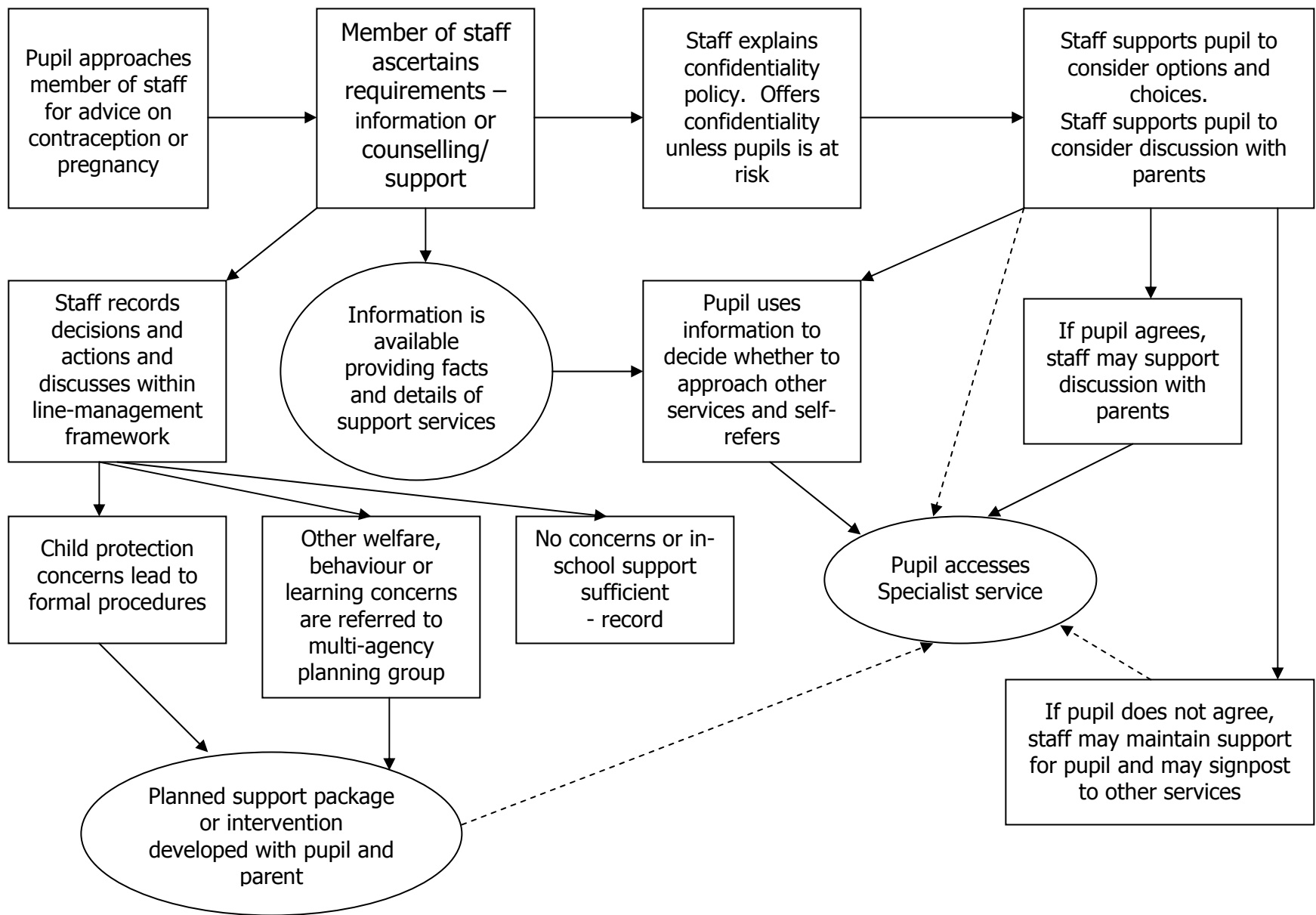
A range of national advice and support is available to schools on the contribution that the curriculum might make to the welfare of pupils. Advice is also available on practical issues such as the administration of medicine to pupils (*The Administration of Medicines in Schools*, SEED 2001). Much of the advice relates to programmes of health education and of personal and social development. Outside agencies can also make valuable contributions to school programmes for children.

3.10 Teenage Pregnancy and Contraception

Schools should have programmes of education for personal and social development which include sex education and should ensure that pupils are aware of the issues associated with teenage pregnancy.

Pupil's may approach a member of staff for support and request that their parents are not informed of their need for contraception, emergency contraception or pregnancy counselling. Some pupils may believe that they are at risk if their parents are informed. Staff should always try to persuade the pupil to involve parents, but must respect confidentiality if the pupil has been given medical confidentiality. Medical practitioners are obliged to provide treatment to any child of legal capacity (a child is of legal capacity when they understand the implications of any treatment and can give informed consent) and have a duty of confidentiality – unless they have child protection concerns.

The following flowchart, taken from '*Safe and Well*', Scottish Executive, (2005) is a helpful guide on how to support a pupil who seeks advice on contraception or pregnancy. Young people should be aware of the services available, how they can be accessed and their rights to treatment.



Staff must recognise that pupils who decide to continue with a pregnancy will require ongoing support and must plan to meet their additional support needs. Pupils who opt to terminate a pregnancy will also require support to cope with the emotional impact involved in the procedure.

It is important that young people are encouraged to seek information and support and staff can signpost pupils to specialist services. The Standard for Personal Support in Schools (*Happy, Safe and Achieving their Potential* SEED 2004 www.scotland.gov.uk/library/education/hsaps.00asp) describes standards that pupils and parents should expect from schools in respect of confidentiality, access to information, and education for personal and social development.

3.11 Sexual Exploitation and Prostitution

Sexual exploitation can take place in varying guises across all sections of society and could affect any child or young person.

The traditional stereotypes of sexual exploitation through prostitution tend to involve standing on street corners, sex with strangers, cash in hand. However sexual exploitation may include the provision of sexual services in exchange for other forms of payment – drink, drugs, consumer goods, or even shelter for the night - and in some cases there may be no exchange of material goods, so that the child or young person is not aware of being sexually exploited. The relationship will be characterised generally by coercion and intimidation. Adults should be vigilant and take appropriate advice.

Guidance on potential indicators of involvement in sexual exploitation and abuse was published in December 2002 by the Working Group on Young Runaways and Children Abused through Prostitution.

www.scotland.gov.uk/library5/justice/vcyr-00.asp

3.12 The Role of ChildLine

Reference is made elsewhere in these guidelines to the possibility of suggesting to a child that he or she might telephone ChildLine.

ChildLine is an independent charity offering free confidential telephone counselling for children. Children contacting ChildLine are encouraged to consider their options, including the involvement of trusted adults and/or other agencies. ChildLine's policy is to go at the child's pace and to accept that a child may not wish to take any of the options suggested.

The confidentiality offered by ChildLine would be breached only in an immediately life-threatening situation. ChildLine would not pass information to other agencies, or back to staff at the school, unless the child had so requested, or if it became clear that a number of other young people were being put at risk of abuse due to an adult identified by the caller(s). In this situation, an assessment might be made that it was necessary to find a way of feeding this information back to an appropriate person or authority.

(www.childline.org.uk)

3.13 Scottish Candidate Number (Unique Pupil Identifier)

From 2006 all pupils in schools in Scotland will have an identity number, known as the Scottish Candidate Number (SCN). This will enable key information to be shared between schools and will help to improve record-sharing when pupils transfer from one school to another (the S2S system). It will also benefit the Children Missing from Education (CME) project, by helping to track children who have disappeared from the education system.

3.14 Action Plan for School Management

1. Ensure that **governors** are fully aware of their responsibilities for child protection in the school. (2.9)
2. Appoint a senior member of staff to be the **Child Protection Co-ordinator (CPC)** with responsibility for co-ordinating issues relating to child protection. Appoint a deputy, and provide appropriate training for both. (3.8)
3. CPC should build up **relationships with local agencies** involved in child protection, establish specific contacts in each agency and obtain a copy of local inter-agency procedures. (3.8)
4. **Update** child protection policies and procedures, including a policy on confidentiality. (3.5)
5. Make the existence of the procedures **known** to **all** governors, staff, parents and pupils, and refer to them in the school prospectus or other appropriate publication. (3.1)
6. Provide **training** for governors, Heads, teaching and non-teaching staff who have contact with children. (3.6)
7. Make arrangements with the local social work office about **making enquiries of the child protection register**. (2.15)

8. Encourage staff attendance at **child protection case conferences**. (4.9.3)
9. When **appointing staff and governors**, ensure that all procedural safeguards, including Disclosure checks, are complied with. (3.2)
10. Consider the **contribution of the curriculum** towards promoting the protection of children. (3.9)
11. Ensure that the school's Child Protection Procedures are compatible with the **Disciplinary Procedures**. (4.7.2)

4. GUIDANCE IN SPECIFIC SITUATIONS

4.1 Initial Response to Concerns

4.1.1 How Concerns may Arise

Concerns about child abuse may arise in the following circumstances:

- a teacher or other member of staff has suspicions arising from observation of the child's behaviour or appearance, or comments the child has made;
- a child tells a teacher or member of staff that abuse has taken place or that the child feels unsafe;
- a third party expresses concerns to a member of staff; this could be another pupil, a parent or guardian or member of the public;
- an anonymous allegation is received.

It is also possible that a school's co-operation might be sought in relation to a child abuse investigation which was initiated outside the school. Issues relating to this are discussed in the paragraphs below.

4.1.2 A Member of Staff Suspects Abuse or a Child Tells of Abuse

The suspicions of a staff member may be aroused by the presence of indicators of abuse referred to in section 5; by a feeling, based on knowledge of the child, that all is not well, or by a mixture of factors.

It may be appropriate for a member of staff to make an enquiry of a child about how an obvious injury was sustained, or why the child appears upset or distressed. Indeed, staff should be encouraged to do so, particularly when children are boarders. It can be distressing for a child to be faced with persistent questioning and the child should not be interrogated. If it is necessary to clarify what a child is saying, questions to the child should not be 'leading' questions which suggest possible answers but should aim to obtain basic information and should be 'open-ended'. For example what happened? where did it happen? when did it happen? who did it? If the child does not respond, the matter should not be pursued further and advice sought.

Questioning and testing of evidence is not a matter for school staff, as this is the responsibility of the police and social work agencies. Such an approach by

staff could prejudice later investigations. The role of school staff is to **observe, record and report**:

- **Observe** carefully the child's behaviour and demeanour.
- **Record** in detail what they have seen and heard, and when they did so. Signs of physical injury should be described in detail or sketched. Any comment by the child concerned, or by an adult who might be the abuser, about how the injury occurred should be recorded, preferably quoting words actually used, as soon as possible after the comment has been made.
- **Report** their suspicions as quickly as possible to the Child Protection Co-ordinator.

Staff should:

- 1 **Listen** sympathetically and with care.
- 2 **Reassure** the child that he/she is not to blame.
- 3 Not show **disbelief**.
- 4 Not give a guarantee of **confidentiality**.
5. Take the allegation **seriously**.
- 6 Affirm the child's **feelings** as expressed (don't tell the child how he/she should feel).
- 7 Avoid being **judgmental** about the information given by the child.
- 8 **Refer** to the Child Protection Co-ordinator in accordance with school guidelines.

It may be that a child seeks a promise of confidentiality either before or after telling of abuse. No absolute guarantee of confidentiality can be given. It should be explained to the child that, whilst the staff member understands his/her concerns and will do what is possible to respect the child's wishes, he or she will have to pass on information if they think it is necessary to protect the child.

If the child draws back from speaking to the staff member, the child should be informed of the possibility of making a private and confidential telephone call to

ChildLine on 0800 1111. ChildLine's approach is to listen to the child, discuss options and encourage the child to seek help from a trusted adult. A member of staff who is concerned about a child in these circumstances should inform the Child Protection Co-ordinator that the child appears to have some concerns.

4.1.3 A Third Party Expresses Concern

As with a direct approach, a member of staff to whom a third party expresses concern should:

- **Observe** the behaviour or demeanour of the person expressing the concerns, where this is done in person.
- **Record** in detail what they have seen and heard and when they did so. Actual words used should be quoted where possible.
- **Report** the matter to the Child Protection Co-ordinator.

Those expressing the concerns may seek from the staff member a guarantee of confidentiality. No absolute guarantee of confidentiality can be given. The information disclosed may be of such a nature that the staff member must pass it on in order to protect a child. Whilst it may be possible to a certain extent to protect the identity of the person expressing concerns, it will be easier to take action to protect the child if that person is willing to be identified. If legal proceedings follow, it may be necessary to disclose the identity of that person.

Where the concerns are expressed by another pupil, it should be remembered that reporting suspicions of abuse may be traumatic for a child and some support may be advisable.

4.1.4 An Anonymous Allegation is Received

Staff in receipt of anonymous allegations about child abuse should:

- **Record** in writing the words used, so far as possible, where the allegation is by telephone, or retain the paper, where it is in writing.
- **Report** the matter to the Child Protection Co-ordinator.

4.1.5 Report by a Member of the Public

Research suggests that some adults see schools as a preferred contact point if they have concerns about the welfare or safety of a child either in the school their child attends or at another school. Parents in conflict may also share

concerns about their partner with school staff. In some circumstances, therefore, school staff will find themselves receiving external information that indicates possible child abuse. In these circumstances it is important that, as with children disclosing, staff listen carefully and sympathetically, treat the matter seriously and as soon as is practically possible on the day, record, sign and date the information. They should also explain to the person that they cannot give a guarantee of confidentiality.

If the concerns indicate that there is reasonable cause to suspect or believe a child is at risk of abuse or significant harm, the Child Protection Co-ordinator should encourage the concerned adult to pass their concerns to social services. In all circumstances, the Child Protection Co-ordinator must ensure that the information is shared with other relevant agencies (health, police, social services), so that an early assessment can be made of any potential/actual harm to the child and whether further child protection enquiries are necessary.

Where the contact remains anonymous, the member of staff should refer the concerns to the Child Protection Co-ordinator who should explain to the referrer the actions that will be taken as set out above.

4.2 Check List for Staff

4.2.1 In All Cases:

IF

- you suspect a child may have been abused
- a child discloses abuse
- a third party expresses concerns to you

You should OBSERVE, R E C O R D and REPORT.

Respond without showing signs of disquiet, anxiety or shock.

Enquire casually about how an injury was sustained or why a child appears upset.

Confidentiality should not be promised to children or to adults.

Observe carefully the behaviour or demeanour of the child or the person expressing concern.

Record in detail what you have seen and heard.

Do not interrogate or enter into detailed investigations; rather encourage the child to say what he or she wants until enough information is gained to decide whether or not a referral is appropriate.

And then **REPORT** to the Child Protection Co-ordinator (CPC) on the same day as the concerns arise.

Information about the allegation must not be shared with any person other than the Child Protection Co-ordinator or the Head.

(If either the Head or the Child Protection Co-ordinator is suspected of involvement in the alleged abuse, the procedure set out in para 4.7.4 should be followed.)

REMEMBER - Keep contemporaneous notes and make a record of them on the same working day.

4.2.2 Historic Abuse/Keeping of Records

Allegations of child abuse can be made, and often are made, several years after the incident or alleged incident occurred. Due to the nature of historic abuse, child protection records should be retained for 25 rather than 5 years after the pupil has left school.

4.3 Action by Staff in Exceptional Cases

By law, any person with concerns about a child has a right to make a report direct to the Children's Reporter. In exceptional cases, where a member of staff feels that concerns about a child are not being taken seriously, or followed through appropriately or with sufficient speed, it is perfectly legitimate for that member of staff to refer the matter directly to the Chair of Governors or the Reporter.

4.4 Action by the Child Protection Co-ordinator (CPC)

All cases of alleged or suspected abuse must be treated seriously. Some may require an urgent response. If the CPC is certain, or has very good reason to suspect or believe that a child has been abused or requires protection or is at risk of significant harm, he/she should follow their local child protection guidelines, stating the concerns clearly and the basis for them.

In cases where there is a high degree of suspicion, or in cases where the issues are not so clear or so urgent, the following procedure can usefully be followed in order to focus and test the strength of concerns about a child. It should always be borne in mind that it is not the school's role to investigate the

allegations or suspicions, but to gather together what information it has about a child and pass it to the social work department. It would be against good investigative procedures for children to be subject to internal investigations and thereafter re-interviewed by the social work and police authorities. Schools are urged to establish relationships with social work departments which will give them the confidence to seek guidance and advice when concerns arise.

The CPC should collate all relevant information held by the school on the child. As an aid to this, a co-ordination meeting may be held, involving relevant members of staff, including the headteacher, the school doctor and the school nurse. Alternatively, this may be done by telephone. It should be made clear to all that matters disclosed must be treated in the strictest confidence.

Consideration should be given to the provision of support for the child and for the member of staff who made the report.

In addition to consideration of the specific suspicions or concerns, the co-ordination meeting or discussion should consider the following points:

- what is known about the child's family situation?
- what are the views of the pupil?
- are there implications for any siblings?
- are there implications for other pupils?
- are the parents/guardians aware of the allegations? What is their likely attitude?
- if the initial suspicions or concerns about a pupil were made by another pupil for whom the school has responsibility, who supports that child and tells the parents/guardians? How much can the parents/guardians be told without breaching confidentiality?

Minutes should be kept of the co-ordination meeting/discussion, together with a record of the reasons for the decision to refer or not to refer. These should be located confidentially within the school.

At the conclusion of the meeting/discussion, a decision should be made about whether the concerns require a referral to the social work department. Referrals should be made in every case where there is any substantial suspicion. **Proof is not required at this stage.** If there is doubt about whether to refer,

the social work department should still be advised of the circumstances of the allegation and the school's doubts about it.

Where the conclusion is that there may be grounds for suspicion that a child has been abused or is at risk of abuse, the CPC should immediately inform the school's local contact in the social work department.

The Head should send a brief report of the incident in confidence to the Chair of Governors or his or her deputy. The names of the people involved should not be disclosed in this report unless there are exceptional reasons for doing so. In the case of an allegation against a member of staff it may be appropriate to name the member of staff as the governors are responsible for his/her employment.

4.5 Child Abuse within the Family or by a Family Member

In cases where it is suspected that child abuse may be occurring within the family, advice should be taken from social work and police as to who contacts the family.

Schools must be especially sensitive to the fears of children in these situations. If a child is afraid to go home, staff should talk to the child about why he or she is afraid. If there are concerns for the child's safety or welfare, these should be communicated to the social work department who may, in appropriate cases, consider making application to the sheriff for a Child Assessment Order, a Child Protection Order or an Exclusion Order. It should be noted that:

- a Child Assessment Order can authorise an assessment of the state of the child's health or development
- a Child Protection Order can authorise removal of the child to a place of safety; and
- an Exclusion Order can authorise temporary exclusion from the child's home of a person suspected of abuse, as an alternative to removal of the child. Sometimes a parent suspected of abuse will agree to leave home voluntarily to avoid removal of the child.

4.6 Emergency Situations

4.6.1 Contacting Other Agencies

Although contact with other agencies would normally be through the social work department, the CPC should not hesitate to make direct contact with the police,

where there is clear and immediate evidence of danger to a child, or with the Children's Reporter where there is cause for concern about the safety of a child.

4.6.2 Sex Offenders in the Community or People Posing a Risk to Schools

Where concerns or suspicion are raised that a named individual or individuals living in the community, or a parent, may present a risk of significant harm to children it is vital that information is properly evaluated, risks considered and action (if any) determined and implemented.

Where the information is concerned with one individual only but no child is named and concerns are that a risk may be present to children in general within the school or the community, there should exist a detailed protocol between the police and local authorities for handling such matters. In general, these protocols will reflect the necessity for sharing of information between relevant agencies on a 'need to know' basis, with a view to arriving at an agreed plan to deal with the circumstances and risk.

In all these situations, the matter should be referred to the Child Protection Co-ordinator who should liaise with the social work department. In the first instance, it is likely that the risk will be assessed between the social work department and the police. However, other local authority departments may require to be involved in planning any action as a result of this assessment (for example, housing, education, leisure and recreation) and a risk assessment meeting may be required involving a representative from the school.

Where wider notification requires to be considered, in exceptional cases, a decision will be made by the police and local authority, who will take into account the need to know on balance with other issues such as the potential for breaching of confidentiality and potential public disorder.

4.7 Allegations Against Staff

Any information, suggestion, allegation or complaint against a member of staff about possible child abuse must be taken seriously. The Head and Child Protection Co-ordinator should be informed immediately and the Head should inform the Chair of Governors.

4.7.1 Establishing the Facts – Unfounded Allegations

Any information which may suggest inappropriate behaviour or an allegation of abuse against a member of staff should be tested for any basis of fact. The basic facts should be established (not investigated). Where the information does not suggest a criminal offence, the context of the interaction between the

member of staff and pupil and the intent of the member of staff should inform the initial assessment; if after due consideration the conclusion is that the allegation is completely unfounded, the decision to take the matter no further should be recorded, together with the reasons for it, and the information placed in a confidential file.

The member of staff should always be informed that such an allegation has been made. Members of staff may wish to seek advice and support from their professional associations in these circumstances.

The initial communication with the parents of the child concerned should be to the effect that information has come to light that may suggest an allegation of inappropriate behaviour and that is/has been investigated. Where the information is shown to have been a malicious allegation by a pupil (and not for example a misinterpretation of the intent of a member of staff), the school may need to take action to consider a temporary suspension/exclusion of the pupil and to safeguard other staff members.

4.7.2 Establishing the Facts – Where the Information Suggests Possible Child Abuse

Where it is clear that the initial information suggests a criminal offence these guidelines should be followed and advice taken by the Child Protection Co-ordinator and the Head before anyone is questioned. Inter-agency child protection procedures and the school's disciplinary procedures should be invoked and the police asked to investigate. If the position is unclear, the basic facts should be established using open non-leading questions and a decision made as to what action the school needs to take. Should there be reasonable cause to suspect or believe that a child is at risk of being abused, or has been abused (or groomed), the same procedures should be followed as for other allegations or suspicions of abuse. If there is any doubt the Head should seek advice from the statutory agencies.

There is an added dimension in that the school will have to consider the need to ensure that children are protected while the allegation is under investigation. The Head and Chair of Governors will need to consider whether they should:

- remove the member of staff from access to children;
- implement a precautionary suspension, without prejudice to the member of staff, for the duration of the investigation.

Where the member of staff concerned has had contact with a number of children, consideration should be given to the possibility that others may also

have been abused. In the event of inquiries being made by other parents, they should be informed that an allegation of possible misconduct has been made against a member of staff, and that it is being investigated. As the matter is likely to be 'sub judice', no further information should be given without first taking legal advice and/or advice from the police.

In the event of such a member of staff being suspended while investigations are taking place, the school should consider whether it may be advisable to inform all parents of children with whom the staff member concerned has had contact. As the matter will be 'sub judice' advice should be sought from the investigating officer in the police who may need to discuss the matter with the Procurator Fiscal. In the infrequent event of a second allegation being made, the school would have to consider informing all parents. Experience has shown that, once rumours and misinformation start to circulate, a lack of openness can lead to a loss of trust between parents and the school and a breakdown in relationships. If there is enough suspicion of multiple abuse to justify enquiries being made of other children and families by police and social work agencies, the school will wish to ensure that it is seen to be co-operating and responding appropriately to the legitimate concerns of parents and guardians.

In this situation, legal advice should be taken about the terms of a letter to be sent to all relevant parents/guardians, and the terms of response to any enquiries from the press. Where the matter is 'sub judice', no letter should be sent to the parents without clearing it with the investigating officer in the police who may need to clear it with the Procurator Fiscal. A delicate balance has to be maintained between openness and confidentiality, which respects rules of law about matters which are under investigation.

In cases where abuse of more than one child is suspected, the school should, after consulting police, social work authorities and the Procurator Fiscal about compliance with legal requirements, consider seeking guidance from a child and family psychiatry/psychology department about support for children, families and staff.

Should the allegations be proven, parents should be informed of the facts and of the action taken by the school. If, after police and social work investigation, there is felt to be insufficient evidence for prosecution, or where a prosecution does not result in a conviction, disciplinary procedures against the member of staff may still be taken, if the member of staff is considered to represent a risk to a child or children or their behaviour has caused concern.

Under the Protection of Children (Scotland) Act 2003, schools have a duty to refer persons for inclusion on the Disqualified from Working with Children List (DWCL) if they have been dismissed or allowed to resign because they have

harmed a child or put a child at risk of harm. Referral to the DWCL is additional to any other steps the school may take, for example, notifying the police, social work department, General Teaching Council or other professional body.

4.7.3 Abuse of Trust

The Sexual Offences (Amendment) Act 2000 introduced a new offence, Abuse of a Position of Trust, where a person aged 18 or over engages in sexual activity with a person under that age if the person aged 18 or over is in a position of trust in relation to the younger person. The definitions of when a person is in a 'position of trust' include where the younger person is receiving full-time education at school.

4.7.4 Allegations against the Head or Child Protection Co-ordinator

In cases where the member of staff against whom the allegation is made is the CPC or Head, a report should be made to the Chair of Governors, as advised above. It will be the responsibility of the governors to consider the matter and take appropriate decisions as well as following the principles in these guidelines. Governors are advised to take independent advice on the matter to avoid any suspicions of a 'cover-up'.

4.7.5 Inappropriate Behaviour by Staff

Where the allegation concerns inappropriate behaviour by a member of staff, it may be appropriate to invoke the school's staff disciplinary procedures. This might be appropriate where there are no child protection concerns.

When staff disciplinary procedures are being formulated or reviewed, it is important that linkages are made between the disciplinary procedures and the child protection procedures, so that there is clarity about the purpose and justification of any particular action by the school management.

4.7.6 The Role of Outside Agencies

The statutory role of the police is to investigate any alleged criminal act and, providing there is sufficient evidence, report the circumstances to the Procurator Fiscal. A successful prosecution would result in a criminal record which would protect other children by alerting future employers to the danger of allowing that person access to children. It would also protect any other children who currently lived in the same household as that person.

If, during a police investigation, it appears a child is in need of compulsory measures of supervision, a referral will also be made to the Children's Reporter.

The role of the social work department would be to provide support to victims and their families, if families wished to have it, or if compulsory measures had been authorised by the Children's Hearing.

4.8 Action by children and Young People Themselves

Children and young people may require protection as a result of their own actions. The following situations may put children and young people at risk and if such circumstances arise, the same principles and child protection procedures should be followed as for other allegations of abuse.

These may involve:

- physical abuse
- emotional abuse, e.g., bullying, racial harassment
- sexual abuse

4.8.1 Inappropriate Behaviour by Pupils

In the case of inappropriate behaviour by pupils, the school's positive behaviour policy or anti-bullying policy should apply and parents should be informed. In more serious cases, the action set out in these Guidelines should be followed. Where a referral to police or social work is needed, it is not appropriate for staff to take on an investigative role. The child should not be searched or aggressively questioned. Not only can this constitute an abuse of the child and an abrogation of his legal rights, but it may weaken the possibility of success of future legal proceedings. Evidence will not be able to be used if it is regarded as having been unfairly obtained.

Schools should note that these considerations are also relevant to situations in which a child is suspected of inappropriate behaviour, for example involvement with drugs or alcohol, where there is no suspicion of abuse by another person.

4.8.2 Sexual Incidents

Sexual incidents require a variety of responses, depending on the context and the circumstances. Did the incident amount to rape or indecent assault, willing participation in under-age sex in a non-exploitative relationship, or exploratory childish activity? Exploratory childish activity may be innocent, but it is sometimes a sign of possible abuse. In general the same procedures should be followed as for other allegations of abuse. Guidelines on the action to be taken

in the event of under-age sex, same gender relationships and sexually inappropriate behaviour is provided in Annexes A and B.

The school also has responsibilities in relation to the welfare, safety and protection of the child or young person who has allegedly abused another. Where it is considered that the pupil may require compulsory measures of supervision, the school will be expected to assist with the Reporter's inquiries and any subsequent referral to the children's hearing. There will be other management issues to consider and it is recommended that staff seek guidance on whether a risk management assessment is necessary on the pupil with sexually harmful/abusive behaviours. The Lead Officer for the school's local Child Protection Committee should be able to advise.

4.9 Co-operation with Police and Child Protection Investigations and Procedures

4.9.1 Police and Social Work Interviews

Where police and/or social work are involved, any interview with a child at the school should take place only with the consent of, or in the presence, of a parent. Where the child is a boarder, it may be appropriate to involve a person nominated by the parent as 'guardian'.

There are exceptional circumstances in which interviews may be permitted without parental consent in which case the Head or deputising teacher should be present, unless it is not in the child's best interests. Such circumstances may be:

- the child him or herself seeks the interview;
- a child mature enough to understand the situation voluntarily agrees to speak to a social worker, or to the police, so long as the child is not a suspect;
- a parent is alleged to have abused the child;
- the anticipated response of the non-abusing parent is unknown;
- an immediate interview is essential to allow a criminal investigation to proceed;
- the parents are suspected of involvement in the offence, and it is necessary in the interests of justice to interview the child.

- if the child is a suspect and is under 16 and the police have been unable to contact the parents a social worker would have to be present.

4.9.2 Information and Participation

Schools may receive requests for information from the Children's Reporter in connection with possible Children's Hearings proceedings. Members of staff may also be asked to participate in the Hearings themselves. Whilst there is no obligation to comply with these requests (as opposed to formal requests by a court or citation as a witness), schools would be advised to co-operate in the interest of any pupil concerned.

4.9.3 Child Protection Case Conferences

If a case conference is convened the school should make every effort to be represented and attend. In the event of a child being placed upon the register the school may be asked to contribute to the child protection plan and attend subsequent review case conferences.

4.10 Advice on Special Circumstances

4.10.1 Work Placements and Community Service

Increasingly young people are being encouraged to contribute to the welfare of the community through school activities:-

- as part of a curriculum initiative, for example through Social and Vocational Studies (SVS);
- as part of the school's planning for citizenship education; or
- through extra-curricular activities such as The Duke of Edinburgh's Award Scheme.

Where placements are being arranged for pupils, or where pupils themselves have arranged the placements, schools should satisfy themselves that, if appropriate, the child protection policy of the organisation affords adequate protection for the pupil.

Schools are advised to check that:

- organisations have been assessed for their suitability, supervision of the pupil, their own staff/volunteer safety policies

- the nature of the activity is suitable for pupil volunteers
- any involvement with other vulnerable members of the community is safe for both them and the volunteer pupils
- pupil volunteers are properly prepared for their placement with the advice on appropriate conduct and personal safety
- young people undertaking activities more independently have a member of staff they can contact at all times
- there are arrangements with the host organisation to contact the school if there are difficulties or if the young person fails to arrive
- transport arrangements to and from the placement are known by the school, the host organisation and the parent.

Schools can also obtain advice from *Volunteer Development Scotland – Stirling Enterprise Park, Stirling FK7 7RP Telephone 01786 479593* www.vds.org.uk/information/infoenquiries.htm or Disclosure Scotland www.disclosurescotland.co.uk. If concerns remain, these should be raised with the school's child protection officer.

4.10.2 Volunteering by Pupils

Many children and young people are involved in activities and opportunities in school where, for example, older pupils support younger pupils or where pupils provide peer support for those with additional support needs or where bullying is being discussed within a group of young people.

Staff should bear in mind the following issues when making arrangements for such activities:-

- children and young people need training for their role in helping other pupils
- children and young people should be aware of the limits of their role in helping other pupils and know how and when to seek help from a member of staff
- guidelines should be in place for peer support and should be discussed with the pupils

- older pupils are not left to supervise younger children without adult support
- one-to-one buddying, paired reading or tutorial support between pupils should take place in view of staff
- pupils, especially younger pupils, should know that they can speak to a member of staff if they feel uneasy about the situation or about their relationship with another pupil.

4.10.3 Information Technology, Mobile Phones, Texting and Digital Images.

The increased use of information and communications technology (ICT) in schools brings risks of its own as well as undoubted benefits for children and young people engaged in learning. Specific advice on child protection issues is given in Annex C.

4.10.4 Residential visits, School Trips Abroad and Outdoor Education

All schools should have guidelines and policies on residential visits, trips abroad and outdoor education, incorporating risk assessment procedures and guidelines on health and safety. The policies should be supported by appropriate training for staff. Specific advice, is given on child protection issues in Annex D.

5. SIGNS OF POSSIBLE CHILD ABUSE

It is important to remember that lists such as the one below are neither definitive nor exhaustive. The information has to be used in the context of the child's whole situation and in combination with a range of other information related to the child and his/her circumstances.

There can be an overlap between all the different forms of child abuse, and all or several can co-exist.

1. PHYSICAL ABUSE

Signs of possible physical abuse:

Unexplained injuries or burns, particularly if they are recurrent;

Improbable excuses given to explain injuries;

Refusal to discuss injuries;

Untreated injuries, or delay in reporting them;

Excessive physical punishment;

Arms and legs kept covered in hot weather;

Fear of returning home;

Aggression towards others;

Running away.

When considering the possibility of non-accidental injury it is important to remember that the injuries may have occurred for other reasons, e.g., genuine accidents or medical disorders.

2. PHYSICAL NEGLECT

Signs of possible physical neglect:

Constant hunger;

Poor personal hygiene;

Constant tiredness;
Poor state of clothing;
Frequent lateness and/or unexplained non-attendance at school;
Untreated medical problems;
Low self-esteem;
Poor peer relationships;
Stealing.

3. NON-ORGANIC FAILURE TO THRIVE

Signs of possible non-organic failure to thrive:

Significant lack of growth;
Weight loss;
Hair loss;
Poor skin or muscle tone;
Circulatory disorders.

4. EMOTIONAL ABUSE

Signs of possible emotional abuse:

Low self-esteem;
Continual self-deprecation;
Sudden speech disorder;
Significant decline in concentration;
Socio-emotional immaturity;
'Neurotic' behaviour (e.g., rocking, head banging);
Self-mutilation;
Compulsive stealing;

Extremes of passivity or aggression;
Running away;
Indiscriminate friendliness.

5. SEXUAL ABUSE

Not all children are able to tell parents that they have been assaulted. Changes in behaviour may be a signal that something has happened.

These are general indicators that the child may be troubled though not necessarily about a sexual assault. The child may have some of these problems or none at all. It is the combination, frequency and duration of signs that will alert you to a problem. Try to notice all changes in usual behaviour.

It is important to remember that in sexual assault there may well be no physical or behavioural signs.

Signs of possible sexual abuse:

(i) Behavioural

Lack of trust in adults or over familiarity with adults;

Fear of a particular individual;

Social isolation - withdrawal or introversion;

Sleep disturbance (nightmares, irrational fears, bed wetting, fear of sleeping alone, needing a nightlight);

Running away from home;

Girls taking over the mothering role;

Reluctance or refusal to participate in physical activity or to change clothes for activities;

Low self-esteem;

Drug, alcohol or solvent abuse;

Display of sexual knowledge beyond child's years;

Unusual interest in the genitals of adults or children or animals;
Expressing affection in inappropriate ways, e.g., 'French kissing';
Fear of bathrooms, showers, closed doors;
Abnormal, sexualised drawing;
Fear of medical examinations;
Developmental regression;
Poor peer relations;
Over sexualised behaviour;
Compulsive masturbation;
Stealing;
Psychosomatic factors, e.g., recurrent abdominal pain or headache;
Having unexplained sums of money and/or possessions
Sexual promiscuity.

(ii) Physical/Medical

Sleeplessness, nightmares, fear of the dark;
Bruises, scratches, bite marks to the thighs or genital areas;
Itch, soreness, discharge, unexplained bleeding from the rectum, vagina or penis;
Pain on passing urine or recurrent urinary infection;
Stained underwear;
Unusual genital odour;
Anxiety/depression;
Eating disorder, e.g., anorexia nervosa or bulimia;
Discomfort/difficulty in walking or sitting;
Pregnancy - particularly when reluctant to name father;
Venereal disease, sexually transmitted diseases;

Soiling or wetting in children who have been trained;
Self-mutilation/suicide attempts.

6 CONFIDENTIALITY

Sample Confidentiality Policy for Schools

The policy of the school is to work in partnership with parents in order to promote the welfare of children. The school also aims to build up relationships of trust with children. Children and parents should feel able to raise with the school concerns about safety and welfare in the knowledge that these will be dealt with sensitively.

Because of the sensitivity of these issues, the school will operate on the presumption that anything imparted in confidence will be treated in confidence. This is subject to three qualifications:

- (i) Anything imparted 'in confidence' to one member of staff or person approached as an associate of the school, may be shared with a restricted number of colleagues if that person feels in need of support and guidance from them.
- (ii) If serious concerns are raised about the safety or welfare or protection of a child, the person approached may be obliged, in terms of the school's child protection procedures, to pass that information on to a Child Protection Co-ordinator for consideration as to whether it should be shared with the appropriate authorities. In these circumstances, the person approached would not, except in an emergency, breach the confidence without letting the person seeking assistance know that he/she intended doing so.
- (iii) The school must, of course, pass on information when legally obliged to do so, for example, by a court of law.

Children must also feel able to share concerns with staff. Problems may arise when a child consults a member of staff about a problem and does not want that information to be shared with parents. Whilst staff will try to encourage children to share the information with parents where that is appropriate, there may be circumstances in which any pressure to pass the information on could result in the child keeping the problem to him or herself or not sharing concerns in the future.

The following is a sample statement on confidentiality which the school issues to pupils. Parents should be reassured that it is the aim of the school always to act in the best interests of the child and to encourage the fullest possible involvement and consultation with parents.

Confidentiality Statement for Children and Young People

- If you have something important to talk to staff about
- If you are worried about things that are happening to you
- If you need help or if you need to know how to seek help, the staff are there to listen and to help - they will try to do what they can
- If you are worried about confidentiality

Tell the staff - they will understand; they may be concerned about your safety or protection and may need to share this with others, but they would tell you first

- If you are still unsure about talking to a member of staff

You can phone ChildLine on 0800 1111; the call is free and will not show up on your phone bill. ChildLine will help you work out what to do next.

7. CODE OF CONDUCT FOR STAFF

7.1 Interaction with Pupils

The climate of suspicion that has developed with regard to child abuse poses a real dilemma for caring adults. This is true in all schools but especially so in boarding situations where schools take a pride in fostering a family atmosphere. In order to protect children from abuse, and staff from suspicions of abuse, the natural inclination to comfort and reassure children through physical contact needs a considered assessment of the situation.

This does not mean that physical contact is never permissible. It does mean that adults touching children must operate within understood limits, and that contact outwith those limits must be a considered response which can be justified if necessary.

Where those limits lie will vary according to the age of the child and the role of the member of staff. A young child in a boarding situation may well require to be comforted and reassured. Any touching or comforting should be age appropriate, context specific, preferably done within vision of others and prompted by the needs of the child, not those of the staff.

One would expect the need and desirability of such contact with older pupils, especially day pupils, to be considerably less, although even in these circumstances situations could arise in which it would be a natural and human occurrence. The death of a pupil, for example, might make it natural for pupils and teachers to grieve together and touching would be neither unusual nor undesirable, so long as it was agreeable to both parties and limited.

It would be impossible to lay down rigid rules about what is and is not permissible. Awareness - raising through in-service training should provide opportunities for staff to explore acceptable limits through discussion of case scenarios.

Common-sense is a good guide, but it must be informed common sense. Child abusers often seek to gain the trust and confidence of children by seeming to care and then exploiting that trust. It is important for caring adults to understand that too generous limits which can be operated satisfactorily by some can be exploited by others with less worthy motives.

The difficulty in laying down clear limits makes it all the more important that schools make every effort to ensure that all staff who have contact with pupils are carefully selected. Where others in the school or boarding environment may

have contact with pupils, they should be carefully vetted or excluded from contact so far as possible.

The following guidance is offered as a starting point for further development through training.

7.2 Opportunities

Opportunities for abuse exist in all schools, especially boarding schools, and in one-to-one situations, e.g., tutorials, music lessons one to one tuition, guidance interviews, sick rooms.

The simplest advice would be to try, so far as possible, to avoid being alone with a child or young person. However, for some staff this is unrealistic as the context of their job is teaching in one to one situations, e.g. Instrumental Music Instructors. This may also prove difficult, especially in a boarding situation, where it might be seen as beneficial for a child to have some opportunity for one-to-one contact with an adult. Where one-to-one contact does happen, it should be timetabled, arranged sensibly and, where possible, with others or within earshot or vision of others. If possible, doors should have built-in windows.

Excursions out of the school, especially residential excursions, can provide opportunities for abuse. Care should be taken to ensure that there are sufficient adults to provide proper supervision and that a risk assessment has been carried out. The guidance in Annex D should be applied as far as possible.

7.3 Key Principles:

Treat everyone with respect.

- Where it is important and appropriate to be alone with a child, never have the door locked and, where possible, maintain a gap / barrier between you and the child.
- Empower children to feel comfortable and confident to point out to you attitudes or behaviour they do not like.
- 'Hands on' educational instructions / support should only be used when verbal or self-modelling is inappropriate or it is necessary for health and safety reasons. Whenever possible, this should be done within earshot, and preferably within vision, of others.

7.3.1 Physical Contact and Restraint

- Physical contact should only be for the purpose of care, instruction or restraint.
- Staff should always be able to justify resort to physical contact in any situation.
- The nature of the contact should be limited to what is appropriate.
- The use of physical restraint on a child should involve the absolute **minimum force** necessary and is only permissible when certain that a child is at imminent risk of endangering themselves or others (or in extreme circumstances of inflicting damage to property). Where possible initial responses should be to deescalate and divert before considering restraint. Staff should avoid restraining a child by putting their hands on a child's joints. Where possible another member of staff should be summoned to witness and give support. As soon as the child is under control, staff should let go of any physical contact. All incidents of restraint should be logged, dated and signed in a log kept for that purpose.
- Avoid any physical horseplay with a child, or any other actions another adult might misinterpret, no matter how innocent or well intentioned the actions might be.
- If another member of staff is seen to behave inappropriately with a child, do not ignore it but share it with the Child Protection Co-ordinator.

7.3.2 Verbal Remarks

Salacious or demeaning remarks should never be made to or in the presence of children and young people. Remarks about a child's physical characteristics or development, or suggestive or derogatory comments could fall into this category. Staff should avoid making unfavourable comparisons to a child and 'picking on' particular children. Positive relationships between staff and children often involve warmth and humour but staff should be aware that there can be a narrow line between remarks which an adult perceives as fair and humorous, but which can be hurtful and embarrassing to a child.

7.3.3 Attachments

In circumstances where your or a member of staff's relationship with, or feelings towards, a child or young person is at risk of being construed as

unprofessional behaviour, seek advice and support from your line manager. If it seems that a young person is becoming inappropriately attached to you or to another member of staff or volunteer or adult helper, share your concerns and seek advice from your line manager.

7.3.4 Meetings

As far as possible staff should avoid one to one meetings with pupils. Where it is necessary to discuss something of a confidential nature or, for example, to provide individual tuition etc., then if possible, such interviews/sessions should take place in a room with visual access or the door open and with another adult in an adjacent area or within earshot. Another member of staff should be aware of the meeting and its purpose.

7.3.5 Climate

In working with young people, it is possible for staff, through ill-considered actions, to lay themselves open to allegations of abuse. Their best protection is to encourage a climate of openness within the classroom and school community, where pupils feel confident to point out aspects of behaviour they do not like.

7.3.6 Training

Keep abreast of the school's child protection policies. Make time in staff meetings/and in CPD events to discuss the topic of keeping children safe and minimising risk to staff. Make sure to understand the issues of boundaries and safety when working with children.

7.4 Inappropriate or Abusive behaviour

The list below is presented to show some of the ways in which inappropriate behaviour or abuse may be manifested. **It is important to recognise that this list is neither definitive nor exhaustive nor is it meant to suggest that all the actions below are in themselves abusive; they must be seen in the context of the interaction with the child and the intention of staff.** Staff should bear these in mind as a way of minimising risk and encouraging good practice. Staff must always exercise professional judgement in each circumstance.

Physical	Hitting/tapping
	Pushing/jabbing
	Throwing missiles
	Shaking

Emotional	Inappropriate/systematic sarcasm Isolating e.g. locked room Unfavourable comparisons Threats Intimidation Scapegoating Systematic personal criticism
Sexual	Any sexual activity with a pupil Inappropriate touching/comforting Suggestive remarks or gestures Sexual harassment Indecent materials Grooming a child for abuse

CHILDREN and VULNERABLE ADULTS - DEFINITIONS

A number of studies suggest that children and vulnerable adults are at increased risk of abuse. Various factors contribute to this such as stereotyping, prejudice, discrimination, isolation and a powerlessness to protect themselves or adequately communicate that abuse has occurred.

DEFINITION OF A 'CHILD'

The Children (Scotland) Act 1995 Act defines a 'child' as a person below the age of sixteen and, for certain purposes may include a person up to the age of eighteen.

- Local authorities have responsibilities to support children and their families until the 'child' is 18.
- Where local authorities have been allocated parental responsibilities by a court order, these responsibilities last until the young person is 18.
- Young people between 16 and 18 who are subject to a Children's Hearing supervision requirement are considered children.
- Boarding Schools have a welfare duty for young people between 16 and 18 in their charge or care.
- In all issues of child abuse, child protection procedures may be extended to cover children with additional support needs (mental or physical disability) until the age of 18.
- Disclosure Scotland requires checks to be made on those working with children up to the age of 18 and with vulnerable adults.
- The Protection of Children (Scotland) Act 2003 covers children up to the age of 18.

Therefore education staff have a responsibility for the welfare and protection of all young people under 18, and particularly those who are 'looked after', who are subject to supervision arrangements, or who have special needs.

DEFINITION OF VULNERABLE ADULT

The term 'Vulnerable Adult' refers to any person aged 16 or over who for the time being is:

- (a) unable to safeguard his/her own welfare or properly manage his/her financial affairs,
and,
- (b) is in one or more of the following categories:
 - (i) a person in need of care and attention by reason of either infirmity or the effects of ageing
 - (ii) a person suffering from illness or a mental disorder
 - (iii) a person substantially handicapped by a disability

Vulnerable Adults may be in need of health or social support services and may be unable to take care of themselves or protect themselves from harm and/or exploitation.

THE LAW AND SEXUAL RELATIONSHIPS

Under-age and Same Gender Sexual Relationships, Indecent Assault and Rape

1 General Guidance

The legal age of consenting heterosexual and same gender sexual relationships is the same, ie 16 (ref The Sexual Offences (Amendment) Act 2000). Such relationships would be identified as child protection matters if there were concerns about the safety of the young persons involved. The following information provides guidance on how staff can identify such concerns.

The guidance is informed by Scots law in respect of when young persons, male and female, can consent to sex, by the Human Rights Act 1998 and by the guidance in *Safe and Well* (Scottish Executive 2005).

i. ***Under-age heterosexual relationships (where the girl is under 12 years of age)***

Given that a girl in this situation does not have legal capacity to consent to sexual intercourse, this could constitute a common law crime of rape.

Action: The Child Protection Guidelines should be implemented.

ii. ***Under-age heterosexual relationships (where the girl is over 12 years and under 13 years)***

Although the girl may have legal capacity to consent to sex in such a situation, it is an offence under (5) 2 of the Criminal Consolidation (Scotland) Act 1995 for any person to have/or attempt to have sexual intercourse with a girl between the ages of 12-13 years. Given the girl's age, level of maturity, sexual health risks, including that of pregnancy, schools should not take a decision on their own.

Action: The Child Protection Guidelines should be implemented.

iii. ***Under-age heterosexual relationships (where the girl is over 13 years and under 16 years)***

Although the girl may have legal capacity to consent to sex in such a situation, it is an offence under section (5) 3 of the Criminal Consolidation (Scotland) Act for any person to have/or attempt to have sexual intercourse with a girl between the ages of 13- 16 years.

Individual cases can vary widely from the possibility of rape or inappropriate adult pressure to willing participation in intercourse or exploratory behaviour. Although different circumstances will ultimately result in different responses to young people's needs, the initial actions of staff and Child Protection Co-ordinators should be the same as in any other case of suspected child abuse. A careful assessment of the situation and any supporting facts is important.

Action: See advice at section 2.

iv. *Rape or indecent assault (where the girl is over 16 years)*

There is no requirement to follow child protection procedures. Staff nevertheless have a responsibility and a common law duty of care and should seek the young person's consent to seek advice on their behalf. The best interests of the young person and their right to confidentiality should guide any decisions.

v. *Same gender sexual relationships (where the boy or girl is under 14 years)*

There is no law governing same gender female (lesbian) relationships in Scotland; however, lesbian sexual relationships involving a girl under the age of 16 could be the subject of a charge under Section 6 of the Criminal Law Consolidation (Scotland) Act 1995 or at Common Law.

There is legislation governing same gender male sexual (gay) relationships. Homosexual acts are called 'sodomy' (which is anal intercourse) or gross indecency or shameless indecency (which is anything short of anal intercourse) and are illegal under the age of 16 (Sexual Offences (Amendment) Act 2000).

Action: The Child Protection Guidelines should be implemented.

vi *Same gender sexual relationships (where the boy or girl is over 14 years of and under 16)*

Individual cases can vary widely from the possibility of penetration or inappropriate adult pressure to willing participation in intercourse or exploratory behaviour or a young person who has a sexual orientation issue. Although different circumstances will ultimately result in different responses to young people's needs, the initial actions of staff and Child Protection Co-ordinators

should be the same as in any other case of suspected child abuse. A careful assessment of the situation and any supporting facts is important.

Action: See advice at section 3.

vii *Sexual relationships (where the boy or girl is over 16 years)*

There is no requirement to follow child protection procedures. Staff nevertheless have a responsibility and a duty of care and should seek the young person's consent to seek advice on their behalf. The best interests of the young person and their right to confidentiality should guide any decisions.

2. Under-age heterosexual relationships (where the girl is over 13 and under 16 years)

2.1 Guidance

For girls over 13 years and under 16, the flowchart and framework which follow may help staff to decide whether a sexual health route or a child protection route is appropriate. The following factors should be taken into account:

- a) The young person's welfare is paramount.
- b) No member of staff should ever take a decision on their own.
- c) **All cases should be referred to the Child Protection Co-ordinator and the Head.**
- d) Under-age sex may take place in a consensual heterosexual relationship, but it is an offence. Staff should neither tacitly nor explicitly condone the commission of an offence.
- e) Parents have specific responsibilities towards their children under Section 1 of the Children (Scotland) Act 1995 which must be taken into account in this situation. These are:
 - to safeguard and promote their child's health, welfare and development
 - to provide direction and guidance

As a general principle parents (where they are not implicated in any alleged disclosure) should be advised of information coming to the attention of school staff to allow them the opportunity of exercising their parental responsibilities. This would not apply if

the young person had been given capacity to consent to her own medical examination under the Age of Legal Capacity (Scotland) Act 1991 and had therefore been given medical confidentiality. In very exceptional circumstances, where a school is of the opinion that it is not in a child's best interest to keep the parents informed because of perceived risks to the child, the Head and Child Protection Co-ordinator should seek advice from social services or their local Child Protection Team.

It should be remembered that the right of the young person to confidentiality is qualified and not absolute. In cases where a young person offers to disclose information about herself to education staff or to a third party on condition that it remains confidential, it must be made clear that this will not always be possible. It is necessary to be honest and to explain to the child or young person that adults are obliged to share certain information in order to protect the child or young person and others from harm.

2.2 Co-ordinating Information

The following questions should assist those involved to reach a decision in the best interests of the young person:

- i. What is the age and maturity of the girl?
- ii. Has the Age of Legal Capacity (Scotland) Act 1991 been applied?

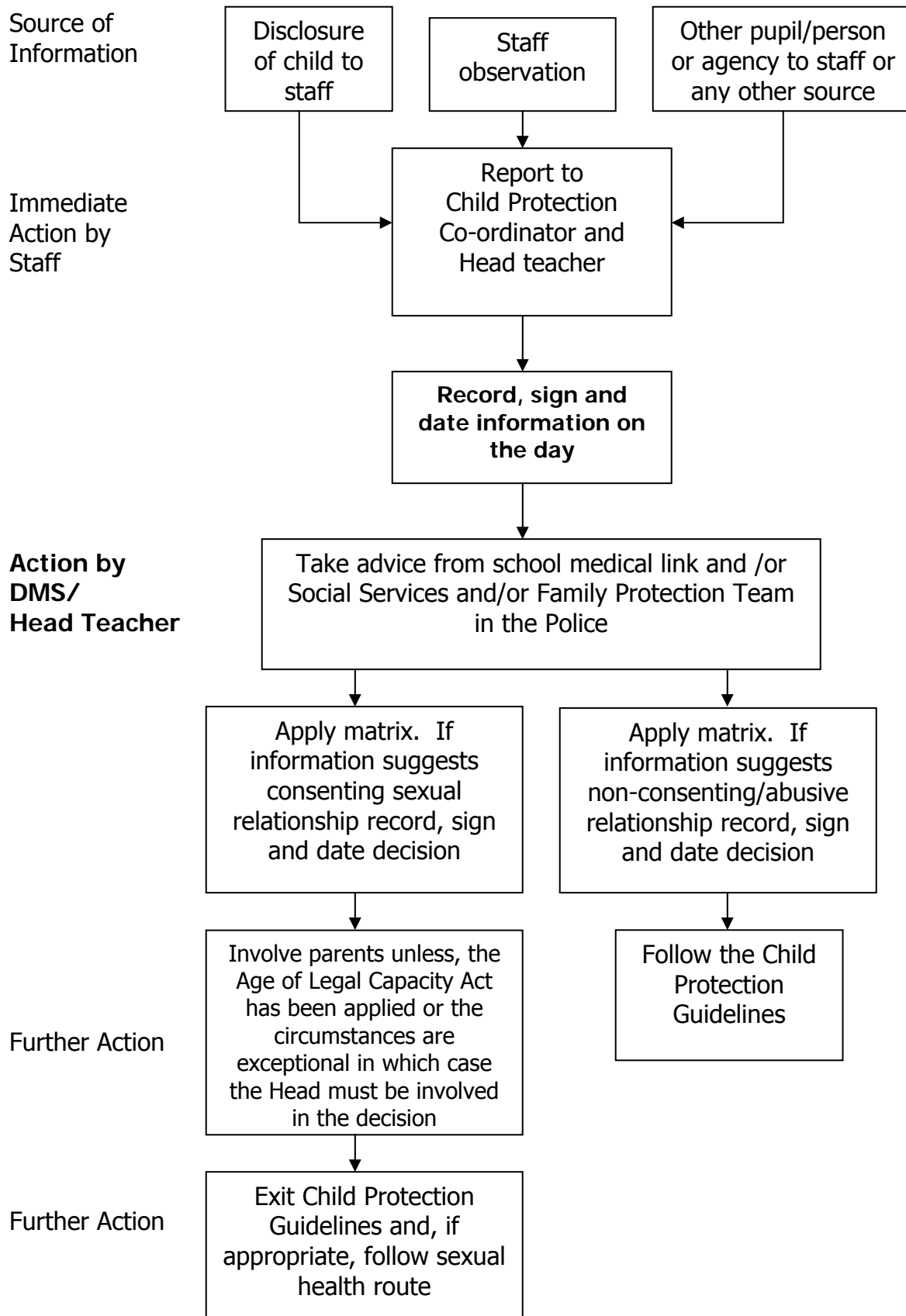
Section 2 (4) of the Act states:

A person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment.

- iii. If the young person has been given legal capacity by a medical practitioner and does not wish the information to be shared with his or her parents or other professionals, this must be respected. In the very exceptional situation (e.g. a young person may be threatening suicide) where staff are of the opinion that consideration needs to be given to breaching medical confidentiality, they would have to refer back to the medical practitioner.

- iv. **Where possible, and it is in the young person's best interests, encourage and support the child to tell their parents.**
- v. All decisions must be recorded.
- vi. Where a young person has been given medical confidentiality and parents wish to challenge this, the challenge is with the respective Health Board or General Practitioner Practice or the employer of the medical person who has given the child legal capacity to consent.

Flow Chart for under age sex where the girl is aged 13-16 years



2.3 Framework for under age sex where the girl is aged 13-16 years

The particular circumstances surrounding each individual case of alleged sexual activity requires careful consideration.

During the disclosure, information may have been made available which may answer some or all of the following questions. **These questions are not intended to be put to the young person.**

- a) What is the nature of the relationship between the alleged perpetrator and the girl? (Does the alleged perpetrator have authority over the girl, and what power differentials are present?)
- b) Does the girl have a physical/learning or communication disability?
- c) Does consent appear to have been freely given?
- d) What is the nature of the activity? Does the incident involve alleged or actual penetration? (Is the type of sexual activity age appropriate? If it is not, and it shows 'excessive sexual knowledge' or there appear to be age-inappropriate sexual motivations in the actions of the alleged perpetrator, then the act is more likely to be abusive).
- e) How often, and for how long has the activity been happening? (Whilst it is acknowledged that one incident may be abusive, frequency and persistence are strong indicators of abuse).
- f) Is there overt aggression, coercion or bribery? (If so, this usually indicates an abusive relationship).
- g) What is the experience of the girl who has been involved? (Did she perceive the behaviours as abusive? Is she blaming herself for what happened? Either scenario indicates possible abuse).
- h) Have there been any attempts to secure secrecy by any of the individual(s) involved? (If there have been attempts to secure secrecy, then the reasons for this should be explored).
- i) How was the activity revealed? (Was there a disclosure from either the alleged perpetrator, the girl, or was the behaviour 'discovered' or disclosed after an inadvertent comment?)
- j) Has the alleged perpetrator's pattern of activity changed over time? (Has it become more frequent, severe or deviant? Is there an indication of progression to younger children? Such an evolving pattern of behaviour can be indicative of abuse).

- k) Does the alleged perpetrator appear to target a particular type of girl? (Common features such as age or vulnerability may suggest a target group, which is indicative of abuse).

3. Same Gender Sexual Relationships (where the boy or girl is over 14 years)

3.1 Guidance

The framework which follows may help staff to decide whether a sexual health/counselling route or a child protection route is appropriate. The following factors should be taken into account:

- a) The young person's welfare is paramount.
- b) No member of staff should ever take a decision on their own.
- c) **All cases should be referred to the Child Protection Co-ordinator and the Head.**
- d) Same gender sexual relationships may take place in a consensual relationship, but if it is an offence it should not be condoned. Staff should neither tacitly nor explicitly condone the commission of an offence.
- e) Parents have specific responsibilities towards their children under Section 1 of the Children (Scotland) Act 1995 which must be taken account of in this situation. These are:
 - a. to safeguard and promote their child's health, welfare and development
 - b. to provide direction and guidance

As a general principle parents (where they are not implicated in any alleged disclosure) should be advised of information coming to the attention of school staff to allow them the opportunity of exercising their parental responsibilities. This would not apply if the young person had been given capacity to consent to her own medical examination under the Age of Legal Capacity (Scotland) Act 1991 and had therefore been given medical confidentiality. In very exceptional circumstances where a school is of the opinion that it is not in a child's best interest to keep the parents informed because of perceived risks to the child, the Head and the Child Protection Co-ordinator should seek advice from social services or their local Child Protection Team.

- f) It should be remembered that the right of the young person to confidentiality is qualified and not absolute. In cases where a young person offers to disclose information about him/herself to education staff or to a third party on condition that it remains confidential, it must be made clear that this will not always be possible. It is necessary to be honest and to explain to the child or young person that adults are obliged to share certain information in order to protect the child or young person and others from harm.

3.2 Co-ordinating Information

The following questions should assist those involved to reach a decision in the best interests of the young person:

- i. What is the age and maturity of the young person?
- ii. Has the Age of Legal Capacity (Scotland) Act 1991 been applied?

Section 2 (4) of the Act states:

A person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment.

- iii. If the young person has been given legal capacity by a medical practitioner and does not wish the information to be shared with his/her parents or other professionals, this must be respected. In the very exceptional situation (e.g. a young person may be threatening suicide) where staff are of the opinion that consideration needs to be given to breaching medical confidentiality, they would have to refer back to the medical practitioner.
- iv. **Where possible, and it is in the young person's best interests, encourage and support the child to tell their parents.**
- v. All decisions must be recorded.
- vi. Where young person has been given medical confidentiality and parents wish to challenge this, the challenge is with the respective Health Board or General Practitioner Practice or the employer of the medical person who has given the child legal capacity to consent.

3.3 Framework for Same Gender Sexual Relationships

The particular circumstances surrounding each individual case of alleged same gender sexual activity requires careful consideration.

During the disclosure, information may have been made available which may answer some or all of the following questions. **These questions are not intended to be put to the young person.**

- a) What is the nature of the relationship? (Does either have authority over the other and what power differentials are present?)
- b) Does either have a physical/learning or communication disability?
- c) Does consent appear to have been freely given?
- d) What is the nature of the activity? Does the incident involve alleged or actual penetration? (Is the type of sexual activity age appropriate? If it is not, and it shows 'excessive sexual knowledge' or there appear to be age-inappropriate sexual motivations in the actions of the alleged perpetrator, then the act is more likely to be abusive).
- e) How often, and for how long has the activity been happening? (Whilst it is acknowledged that one incident may be abusive, frequency and persistence are strong indicators of abuse).
- f) Is there overt aggression, coercion or bribery? (If so, this usually indicates an abusive relationship).
- g) What is the experience of the individuals involved? (Does either perceive the behaviour as abusive? Is either blaming themselves for what happened? Either scenario indicates possible abuse).
- h) Have there been any attempts to secure secrecy by any of the individual(s) involved? (If there have been attempts to secure secrecy, then the reasons for this should be explored).
- i) How was the activity revealed? (Was there a disclosure from either individual or was the behaviour 'discovered' or disclosed after an inadvertent comment?)
- j) Has the alleged perpetrator's pattern of activity changed over time? (Has it become more frequent, severe or deviant? Is there an indication of progression to younger children? Such an evolving pattern of behaviour can be indicative of abuse).

- k) Does the alleged perpetrator appear to target a particular type of person? (Common features such as age or vulnerability may suggest a target group, which is indicative of abuse).

CHILDREN/YOUNG PEOPLE WITH SEXUALLY INAPPROPRIATE/ HARMFUL/ ABUSIVE BEHAVIOURS

In any of the above behaviours, a distinction must be made between behaviour normally expected between young people and children and behaviour that is inappropriate. Where the behaviour is inappropriate, normally this would be dealt by the school with the involvement of parents of both parties. Where the behaviour is reactive (where a child who has previously been sexually abused imitates this or acts out the behaviour on other children) then having taken advice under local Child Protection Procedures, if agreed, a therapeutic approach should be adopted with the involvement of relevant agencies.

Activities between children and young people of a sexual or physical nature are inappropriate where one or more of the following characteristics is present:

- lack of true consent
- inequalities in power (such as chronological age, development stage or size)
- actual or threatened coercion

When abuse, including sexual or physical assault is believed to be perpetrated by a young person or child, these guidelines should be followed for both the child who is the alleged victim, and the child about whom there are concerns. It is important that assumptions are not made that somehow abuse is less distressing or harmful to a child if perpetrated by another child or young person.

The following questions can be helpful in determining the significance of a particular set of circumstances.

- 1 What is the nature of the relationship between the alleged 'perpetrator' and the alleged 'victim'? [Does one party have authority over the other, and what power differentials are present?]
- 2 Does the incident involve acts that have sexual implications through physical actions involving sexual parts of the body, or the use of sexual language which is offensive or which makes explicit sexual suggestions? [It is important to consider that abuse can be verbal and need not necessarily involve a physical component.]

- 3 How sophisticated is the activity? [Is the type of sexual activity age appropriate? If it is not, and it shows 'excessive sexual knowledge' or there appear to be age-inappropriate sexual motivations in the actions of the alleged perpetrator, then the act is more likely to be abusive.]
- 4 How often, and for how long did the activity happen? [Whilst it is acknowledged that one short incident may be abusive, frequency and persistence are strong indicators of abuse.]
- 5 Has a pattern of activity changed over time? [Has it become more frequent, severe or deviant, are 'victims' getting younger? An evolving pattern of behaviour can be suggestive of abuse.]
- 6 Is there overt aggression, coercion or bribery? [If so, this usually indicates an abusive relationship.]
- 7 What is the experience of the person who has been 'abused'? [Did the recipient perceive the behaviours as abusive, or is the recipient blaming him/herself for what happened? Either scenario indicates that the act may be abusive.]
- 8 Have there been any attempts to secure secrecy by any of the individuals involved? [If there have, then the reasons for this need to be clarified].
- 9 How was the activity revealed? [Was there a disclosure from either the alleged 'perpetrator' or the 'victim', or was the behaviour 'discovered' or disclosed after an inadvertent comment?]
- 10 Does the abuser appear to target a particular type of 'victim'? [Common features such as age, sex, or vulnerability may suggest a target group, which is indicative of abuse.]
- 11 What are the nature of any fantasies? [Those with fantasies which include abusive scenarios are, perhaps, more likely to express these in abusive situations. Fantasies give a clue to self-image, views about sex and the nature of sexual interest.]

It is essential that an assessment is made and intervention planned for any young person involved in harmful or abusive behaviour to others, in order to attempt to prevent the young person continuing to abuse. In many cases, although not necessarily all, it is possible that the young person him/herself may have been abused. Also, work with adult abusers has shown that many began abusing in childhood and adolescence

and that abuse is likely to become progressively more serious – it is therefore most important that help is provided for the young person as well as the victim. Children who have harmful behaviours towards other children require comprehensive assessment and therapeutic intervention by skilled child care professionals. This treatment is more likely to be effective if begun early in the child's life. The Cosgrove Report stressed that *where young people are beginning to demonstrate sexually inappropriate behaviour, early intervention is required to prevent offending.*

The Head and the Child Protection Officer should also consider whether procedures need to be put in place to protect other children from the alleged perpetrator, and take steps immediately to implement any necessary action including a risk assessment.

INFORMATION TECHNOLOGY, MOBILE PHONES, TEXTING AND DIGITAL IMAGES

The increased use of information and communications technology in schools is bringing significant benefits to both teachers and pupils. There is no doubt that ICT can enhance pupils learning experience. Schools should therefore ensure that that Internet safety issues are not seen purely as the concern of ICT Co-ordinators or Computing Teachers, but are a responsibility for teachers and staff across the whole curriculum. The vast array of information, often from the original source, and the instantaneous communication using a variety of media will change the way we experience life and work. It is essential that children and young people have the opportunity to experience these new technologies and develop the searching, sorting and filtering skills that are likely to be part of everyday life. Nevertheless the same ability to access information on any subject, and to communicate throughout the world, means that children and young people will be exposed to material, situations or communications which are undesirable, distressing or abusive.

In recognition of these risks, a range of guidance is available to schools, including *Double ClickThinking - Personal Safety on the Internet* published by the Scottish Executive (available on the National Grid for Learning website) <http://www.ltscotland.org.uk/doubleclickthinking/index.asp> and an E-Safety information pack obtainable from the *BECTA* website <http://www.becta.org.uk>.

Schools should therefore have in place an Acceptable Use Policy for the Internet for staff and pupils which should be shared with parents. This should include guidance on the following:

- a statement of the need for, aims of, and the commitment to, safe use of the Internet and electronic communications.
- a policy for ICT use (including risk assessment, user authentication and remote access policy). It should also give guidance on the following:
 - details of appropriate filter systems to protect users from accidental exposure to unsuitable materials during Internet searches;
 - the content of school websites, and in particular, the risks of enabling individual children to be identified;
 - the use of internal and external email;
 - if applicable, access to chat rooms;
 - protocols in relation to Internet searches;
 - use of school dark rooms

- monitoring arrangements and means of identifying pupils or staff;
- letter for parents;
- accessing inappropriate materials;
- use of mobile phones and texting;
- guidelines on misuse;
- an agreed policy document for staff and pupils.

Should anyone suspect such equipment is being used for illegal purposes by staff or pupils, all those involved in the protection of children should be aware of the evidential value of computer based evidence. Staff should pass any concerns to the Child Protection Co-ordinator and record them on the day. The following procedures should then be adopted:

- a) prevent the computer from further use;
- b) do not allow anyone to disconnect the power;
- c) do not allow anyone to touch any keyboard;
- d) do not allow anyone to alter the state of the computer or associated equipment in any way at any time during the investigation;
- e) contact the police.

Thereafter the police will contact designated computer support for advice and assistance.

It is recognised that there are other potential risks, particularly in boarding schools, in a range of associated activities, which also need to be assessed, monitored and supervised. These include:

- **Young people frequenting Internet Cafes or communication centres**

It should be borne in mind that the risk may not be present only through 'on-line' activity but associations made on, or near, these premises (with adults or with other young people). Some premises have a degree of regulation but individuals are not routinely supervised.

- **On-line conversations with other individuals**

Young people may regularly enter into on-line conversations, such as chat rooms, regarding subjects of mutual interest, for educational purposes or as a leisure activity. Often these conversations are with peers. However, where no method of checking the genuineness, trustworthiness, age, or intent of the other party

exists, young people might find themselves potentially at risk. This may be particularly so where personal details are exchanged or arrangements made to meet.

- **Mobile Phones**

A common reason for the carrying of mobile phones by young people is for personal safety. Many parents want their children to be able to contact them if they are in difficulty, or if they change their plans about when they will return home.

There can however be problems associated with mobile phones in school such as:

- discipline issues – texting, calling and playing games on mobiles during lessons, assemblies, exams, etc
- bullying or harassment or victimisation – inappropriate texting or calls to other pupils
- theft – within school, on the way to or from school, or when on school outings
- photography and filming – these functions can be used inappropriately, such as within changing rooms, recording fights (“happy slapping”) or other incidents, breaching others’ safety and privacy. They can also be used to send indecent images, including those of other pupils, (which is technically an offence and if a pupil was charged with such an offence, they could find themselves on the Sex Offenders Register).

Schools need to have in place a mobile phone policy which should be discussed with pupils and parents. The policy should clearly set out the circumstances in which use of a mobile phone in school is appropriate, arrangements for the safe-keeping of phones during school hours and sanctions for the misuse of mobile phones.

The technology on mobile phones allows for oral, aural and visual communication and internet access. Such usage would normally take place outside school, in the home and community venues but is not constrained by filtering software and may not have adult supervision. The school policy should include consideration of issues such as the creation, sharing or printing of offensive digital images, including screen savers, and could also cover the school’s expectations of usage that would be regarded as appropriate or inappropriate outside school hours.

- **Texting**

Many young people use mobile telephone technology to send and receive electronic texts. This can of course be innocent but can also take the form of harassment,

bullying or victimisation. Unsupervised, this activity may be carried out by a young person whose intent may pose a risk to other young persons. Texting can also be used by adults posing a serious risk to young people or children who may be being 'groomed' for sexual purposes. Pupils should be aware that they can talk to a member of staff if they are concerned about any form of texting either to themselves or to other friends or any pupil.

- **Image Messaging**

Pupils' inappropriate use of digital imaging by mobile phone messaging must also be considered as a potential risk. Images can be used to bully victimise or harass others, or for pupils to gain gratification from capturing images of incidents inside or outside school and sharing these by text or on the internet or on a personal website. Appropriate use of texting and image messaging should be covered in the school's policy on mobile phones.

- **Digital Photography**

Many young people use mobile telephone technology to take photographs and to send them electronically. Should schools allow their usage for a specific purpose, they need to make clear to pupils the boundaries of their usage e.g. a residential field trip for secondary pupils; photographs of other pupils should only take place with their consent and never in areas of personal privacy or in a state of undress.

RESIDENTIAL VISITS INCLUDING SCHOOL TRIPS ABROAD AND OUTDOOR EDUCATION

Generally school residential visits fall into the following four categories, each of which has the potential for child protection issues to arise:

- trips abroad;
- exchange visits, for example, of a school orchestra or sports team where accommodation is provided in the homes of families not directly known to the school;
- outdoor education courses run by external centres where the children stay in accommodation provided by the centre, and are mainly under the direction of centre staff; or
- field visits or trips where the school itself organises the accommodation and supervises the children throughout the visit.

School Trips Abroad

The Head carries ultimate authority and responsibility for all school trips including ensuring that appropriate risk assessments have been completed. Specific and extremely helpful advice regarding safeguards and child protection guidance procedures is contained in the document *The Protection of Young People in the Context of International Visits - City of Edinburgh Council 2002* <http://www.scotland.gov.uk/Publications>. These guidelines are recommended by the Scottish Executive. Staff organising such visits should be trained and should follow the school's child protection guidelines and the school's health and safety policy especially in relation to risk assessments.

Exchange Visits

In the exchange situation, there is a risk that a child may be placed in a family where abuse exists, or where the level of supervision is so low that he or she is exposed to significant risk. In planning a trip involving home stays, the school should agree a set of standards for home stays and for supervision with the local organiser. Guidance on such standards is also included in *Health and Safety Educational Excursions (SEED 2004)* <http://www.scotland.gov.uk/Publications/2004/12/20444/48943>. There should also be an expectation that, provided such procedures exist, host families are appropriately checked under Disclosure Scotland or other appropriate systems such as

seeking references. Group leaders should make daily contact with all members of the group to satisfy that all is well. Children involved and their parents should be given emergency numbers for contact should problems arise. In countries where the legislation with regard to alcohol or drugs is more lenient than in Scotland, staff should not condone young people drinking alcohol or taking drugs when they could not legally do so in Scotland. The Code of Conduct for the trip (agreed in advance by parents, pupils and staff) should set the expected standards of behaviour (including the rules on personal safety) whilst ensuring that pupils gain maximum cultural, social and educational benefits.

Outdoor Education Courses

In outdoor education situations, schools have a duty to satisfy themselves that the selected centre has clear child protection, security and health and safety policies and procedures in place. In addition, staff offering agreed activities should be appropriately qualified to teach them and have had appropriate Disclosure Scotland checks. Such issues should have been fully explored prior to the visit and appropriate risk assessments completed. However, organisers should also be alert to last minute alterations, possibly in response to changes in weather conditions, and should be prepared to refuse to allow children to participate, if they are not satisfied that staff are appropriately qualified. Where the Centre is being shared with one or more other party, organisers should satisfy themselves that the arrangements in place allow them to provide adequate supervision and protection for their own pupils.

Field Trips Organised by the School

Where the school organises its own trip, there is a significant burden of responsibility on the school to ensure that appropriate steps are taken to secure participants' safety and welfare. The following are features of good practice:

- A code of conduct should be agreed with parents, pupils and staff prior to departure, and agreement reached on the action to be taken should it be breached;
- The organiser should be satisfied that the accommodation is appropriate, and in particular that the bedroom arrangements enable suitable room sharing arrangements, privacy, in terms of age and gender and appropriately located staff bedrooms for both supervision and ease of access in case of emergency;
- Both daytime activities and evening leisure should be adequately supervised.

Particularly on trips taking place during holidays, it is understandable that both staff and children should feel greater informality is appropriate. However there is significant

difference between a more informal approach, and a failure to exercise due care. In particular:

- Young people should not be permitted to wander alone in unfamiliar places;
- Staff should not fraternise or be over-familiar with pupils;
- Free time for pupils does not equate to free time for staff.

Even when all aspects have been well considered, it is still possible that a child protection incident may occur. Where it is believed abuse has/may have been committed a referral should be made to the relevant police service immediately. It should be noted that particularly in relation to sexual activity, different countries have markedly different ages of consent. The school's own Head or in his/her absence the Child Protection Co-ordinator should be contacted. Contact with the parents of those directly involved should be made as soon as possible. Generally, it will be more appropriate for the Head to contact other parents or carers within the group to explain as clearly as possible what the situation is and what is being done, leaving the staff on the trip free to support the pupils there. Given the general availability of mobile phones, any significant delay in contacting parents should be avoided to prevent the spread of rumours. Further guidance can be found in '*Safe and Well*', Scottish Executive, (2005) www.scotland.gov.uk.

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LEGISLATION

The Age of Legal Capacity (Scotland) Act 1991 (section 2.12, Annex A)

The Children (Scotland) Act 1995 (sections Introduction, 2.1, 2.4.4, 2.4.5, 2.6, 2.8.2, Appendix 1, Annex A)

The Children and Young Persons (Scotland) Act 1937 (section 2.4.1, 2.4.5)

The Criminal Justice (Scotland) Act 2003 (section 2.4.2)

The Criminal Law (Consolidation) (Scotland) Act 1995 (Annex A)

The Criminal Procedure (Scotland) Act 1995 (section 2.4.5)

The Data Protection Act (1998) (section 3.5)

The Education (Additional Support for Learning) (Scotland) Act 2004 (section 2.14)

The Family Law (Scotland) Act 2006 (section 2.6, 2.12)

The Female Genital Mutilation (Scotland) Act 2005 (section 2.7)

The Freedom of Information Act 2002 (section 3.5)

The Human Rights Act (1998) (section 2.1, 2.2.2, Annex A)

The Police Act 1997 (section 3.2.1)

The Protection of Children (Scotland) Act 2003 (section Introduction, 2.4.4, 3.2.3, 4.7.2, Appendix 1)

The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (section 2.7)

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